

BULKY DOCUMENTS

(exceeds 300 pages)

Proceeding/Serial No: 9 1163719

Filed: 3-20-07

Title: Deposition of Joel Young, Jan McBride,

And Brenda Mueller

Certified Exhibits #'s 1 through 54 to Depositions Listed

Part 1 of 3

TTAB



March 19, 2007

United States Patent and Trademark Office
Trademark Trial and Appeal Board
James Madison Building – East Wing
Concourse Level
600 Dulany Street
Alexandria, VA 22314

VIA FEDERAL EXPRESS

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being delivered via Federal Express in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, James Madison Building – East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314, on the date below:

3.19.07 
Date Signature

Re: Opposer: Digi International Inc.
Applicant: DigiPos Systems Inc.
Opposition No.: 91163719
Serial No.: 76/561,585
Our File No.: 51307-469997

Dear Sir/Madam:

Enclosed for filing please find the following:

1. certified copy Deposition of Joel Young;
2. certified copy Deposition of Jan McBride;
3. certified copy Deposition of Brenda Mueller; and
4. certified Exhibit Nos. 1 through 54 to the Depositions of Joel Young, Jan McBride, Brenda Mueller.

Also enclosed please find a copy of the Notice of Filing Certified Depositions of Joel Young, Jan McBride and Brenda Mueller, and Exhibits 1 through 54 to the above, which was served upon Applicant's counsel via fax and U.S. Mail on today's date.

If any fees are necessary to secure the filing of this document, the undersigned authorizes that they may be charged to Deposit Account No. 502442, making reference to our file number 51307-469997.

Please acknowledge receipt on the enclosed self-addressed, stamped postcard.

Very truly yours,



Marsha Stolt
Attorney At Law
(612) 877-5443
StoltM@moss-barnett.com

MS/mis
Enclosures
972861v1



03-20-2007

U.S. Patent & TMO/TM Mail Rpt Dt #72

cc Serge Anissimoff, Esq. (w/encl – Notice)

March 19, 2007

VIA FACSIMILE and U.S. MAIL

Serge Anissimoff, Esq.
Anissimoff & Associates
Richmond North Office Centre
London, ON N5X 4E7
Canada

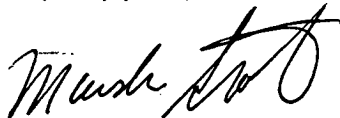
Re: Opposition No. 91163719 Between Digi International Inc. and DigiPos Systems Inc.
Our File No.: 51307.469997
Your Ref.: 942327

NOTICE

Notice is hereby given that a certified copy of the Deposition Transcripts of Joel Young, Jan McBride, Brenda Mueller and Exhibit Nos. 1 through 54 referred to in the Depositions will be filed with the United States Patent & Trademark Office, Trademark Trial and Appeal Board on March 19, 2007.

A copy of our letter to the Trademark Trial and Appeal Board is attached hereto.

Very truly yours,



Marsha Stolt
Attorney At Law
(612) 877-5443
StoltM@moss-barnett.com

MS/mis
Enclosure
972940v1

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3

4 -----
5 Digi International Inc.,

6 Opposer,

7 Opposition Number

8 vs.

91163719

9 Serial No. 76/561,585

10 DigiPos Systems Inc.

11 Applicant.
12 -----

ORIGINAL

13
14 DEPOSITION OF

15 BRENDA MUELLER

16 October 17, 2006

17 1:30 p.m.
18
19
20
21
22
23

24 REPORTED BY: Kathy L. Soper, CSR, RPR

25 California CSR No. 8519

1 The Deposition of BRENDA MUELLER, taken
2 pursuant to Notice of Taking Deposition,
3 taken before Kathy L. Soper, RPR, a Notary
4 Public in and for the County of Hennepin,
5 State of Minnesota, taken on October 17,
6 2006, at Moss & Barnett, located at
7 90 S. 7th Street, Suite 4700, Minneapolis,
8 Minnesota, commencing at approximately
9 1:30 p.m.

10
11 APPEARANCES:

12
13 JOHN P. BOYLE and MARSHA STOLT,
14 Attorneys at Law, of the Law Firm
15 MOSS & BARNETT, P.A., 90 S. 7th Street,
16 Suite 4700, Minneapolis, Minnesota 55402,
17 appeared for and on behalf of the Opposer.

18
19 SERGE ANISSIMOFF, Attorney at Law, of
20 the Law Firm ANISSIMOFF & ASSOCIATES,
21 Richmond North Office Central, Suite 201,
22 235 North Centre Road, London, Ontario
23 N5X 4E7, appeared for and on behalf of the
24 Applicant.
25

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Mr. Boyle

5

EXHIBITS

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9

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10

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12

1 BRENDA MUELLER,
2 called as a witness, was duly sworn and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. BOYLE:

7 Q. Ms. Mueller, my name is John Boyle. I
8 represent Digi International and I am here
9 to take your deposition pursuant to a
10 Deposition Notice.

11 Do you understand that?

12 A. Yes.

13 Q. And you are here pursuant to a Deposition
14 Notice?

15 A. Correct.

16 Q. Can you just tell us how long you have been
17 with Digi.

18 A. Yes. I have been with Digi for six and a
19 half years, since March of 2000.

20 Q. And what is your position with Digi?

21 A. I am corporate controller.

22 Q. And have you held that same title during the
23 whole time you have been at Digi?

24 A. Yes, I have.

25 Q. And can you tell us what your

1 responsibilities involved being corporate
2 controller.

3 A. I have responsibility for, basically,
4 managing the corporate finance department,
5 so all of the accounting-related functions
6 report in to me, general accounting, our
7 cost accounting, credit collections, and
8 both our internal and external reporting.

9 So including our SEC reporting.

10 Q. And as part of your responsibilities, have
11 you also researched and are you
12 knowledgeable of the historical financial
13 condition of the company prior to your being
14 there?

15 A. Yes. I am aware of the financial condition
16 prior to my arrival.

17 Q. Can you just tell me briefly what your
18 previous employment background was, starting
19 with the time that you came to work at Digi
20 and moving backwards.

21 A. Okay. Before I came to Digi, I worked for a
22 company called Sandoz Nutrition, which
23 subsequently was renamed Novartis Nutrition
24 located in St. Louis Park here.

25 And I was hired there in 1985 as a

1 staff accountant and, actually, worked there
2 for 15 years, moving through various
3 positions there.

4 My final position there was the
5 director of general accounting and financial
6 services, and my responsibilities there
7 included general accounting, financial
8 reporting, accounts payable, accounts
9 receivable, many of the same roles that I
10 held with Digi.

11 And prior to that I worked with the
12 Carlson Companies, and that company was a
13 big conglomerate here in the Minneapolis
14 area, and I worked for their corporate
15 consolidations group.

16 And prior to that, I worked for one
17 of their subsidiary locations called
18 Country Kitchen, and I was with those
19 positions for about, in total, three years,
20 as well.

21 Before that -- that was my first
22 job out of college, was the job prior to
23 that, and it was working for a small company
24 downtown just doing, basically, payroll and
25 bookkeeping.

1 So those are the positions that I
2 have had since Digi.

3 Q. Have you earned any professional
4 designations?

5 A. I did sit for and pass the CPA examination
6 in 1983.

7 Q. And that acronym stands for Certified --

8 A. Public Accountant.

9 Q. I knew it. And I lost it for a minute.
10 Certified Public Accounting?

11 A. Uh-huh.

12 Q. And can you tell me about your educational
13 background.

14 A. I have a four-year Bachelor's degree from
15 Minnesota State University in Mankato. And
16 it's in accounting and finance.

17 Q. In what year did you get your degree?

18 A. It was 1980.

19 Q. Can you tell us when the corporation that is
20 Digi was formed.

21 A. The company was formed in 1985.

22 Q. And did it have a different name at that
23 time?

24 A. It was called Digi Board.

25 Q. And at some point did that name change?

1 A. It did change. It 1989 the company had its
2 IPO and it changed to Digi International at
3 that time.

4 Q. And has it remained under the name
5 Digi International since 1989?

6 A. That's correct.

7 Q. So if I follow you right, from its inception
8 in 1985 to the name change in 1989, it
9 operated under the name Digi Board?

10 A. Uh-huh, correct.

11 Q. And the current company has operated under
12 the name Digi International since 1989?

13 A. That's correct.

14 Q. When the IPO occurred?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. As part of your responsibilities and
19 background, do you have access to company
20 financial information regarding annual
21 revenues?

22 A. Yes, I do.

23 Q. And for purposes of the deposition today,
24 did you compile annual amounts of annual
25 revenues for years going back to 1986?

1 A. Yes, I did.

2 (Exhibit 53 marked for
3 identification.)

4 BY MR. BOYLE:

5 Q. Showing you what's been marked as Deposition
6 Exhibit 53, do you recognize that document?

7 A. Yes, I do.

8 Q. Can you tell us what this is.

9 A. This is a summary of our net sales from 1986
10 up through 2005.

11 Q. And can you tell me what this information is
12 based upon.

13 A. This information is based upon our 10K
14 filings, our annual report filings that were
15 done for those years and filed with the SEC
16 for the years post-IPO.

17 Q. And there is a reference here on Exhibit 53
18 to net sales.

19 Just so we are clear, can you
20 define what "net sales" means.

21 A. Net sales would include our gross sales less
22 any returns and allowances and less any type
23 of rebates that we would be offering.

24 Q. And I would take it these numbers are
25 actually reflecting millions of dollars?

1 A. That's correct.

2 Q. So what would the first number under the
3 year 2005 be?

4 A. That's \$125,198,000.

5 Q. And as the exhibit shows, each fiscal year
6 net sales, and then it shows the source of
7 the information?

8 A. Correct.

9 Q. And so in each case, it looks like the
10 dollar amounts that have been put under net
11 sales derives from or comes from the
12 Digi International fiscal annual report for
13 that year?

14 A. That's correct.

15 (Exhibit 54 marked for
16 identification.)

17 BY MR. BOYLE:

18 Q. Showing you what's been marked as Deposition
19 Exhibit 54, have you seen this document
20 before?

21 A. Yes, I have.

22 Q. Is this a document you prepared?

23 A. Yeah, I did.

24 Q. Can you tell us what this document shows.

25 A. This document shows the net sales broken

1 down between the U.S. and the international
2 sales of Digi.

3 Q. And it appears that the source of
4 information on this for Exhibit 54 is
5 similar to 53 in that it comes from the
6 Digi International fiscal annual reports?

7 A. That is correct.

8 Q. And I take it the dollar amounts reflected
9 are in millions of dollars?

10 A. Yes.

11 Q. So the first one under fiscal year 2005,
12 that would be \$72,004,000

13 A. Correct.

14 MR. BOYLE: Did I read that right?

15 MR. ANISSIMOFF: I think you
16 misspoke yourself. I think the numbers are
17 in thousands of dollars, and so 72,004
18 becomes 72 million.

19 THE WITNESS: That's correct,
20 right.

21 BY MR. BOYLE:

22 Q. All right. Yeah, I probably did misspeak.

23 So when we look at this chart,
24 which is Exhibit 54, would you read it such
25 that the first item under fiscal year 2005

1 reflects 72 million and some-odd dollars?

2 A. Uh-huh, that's right.

3 Q. And similarly, when we go back to
4 Exhibit 53, the same applies in that the
5 first entry there for 2005 is \$125,198,000?

6 A. Right.

7 Q. And for each year you have broken down the
8 amount of net sales by U.S. and
9 international for each year; is that right?

10 A. Correct.

11 Q. And would the definition of "net sales" for
12 Exhibit 54 be the same as you defined it for
13 Exhibit 53?

14 A. Yes, that's correct.

15 (Exhibit 55 marked for
16 identification.)

17 BY MR. BOYLE:

18 Q. Showing you what's been marked as Deposition
19 Exhibit 55, do you recognize these
20 documents?

21 A. Yes, I do.

22 Q. Can you tell me what these are.

23 A. These are selected pages from the annual
24 reports that are named in the other
25 exhibits.

1 Q. So when you make reference to
2 Digi International Fiscal Annual Reports in
3 Exhibits 53 and 54, the pertinent pages --
4 some of the pertinent pages related to those
5 annual reports are reflected in Exhibit 55?

6 A. That is correct.

7 Q. And were the numbers for Exhibits 54 and
8 Exhibit 53 taken from these pages of the
9 annual reports that are Exhibit 55?

10 A. Yes, they were.

11 Q. And if we go through the document real
12 quickly, it looks like pages 1 through 3
13 relate to the 2005 annual report?

14 A. Yes, that is correct.

15 Q. And, for example, on page 2 of Exhibit 55,
16 at the upper part for 2005 it reflects net
17 sales of \$125,198,000?

18 A. Correct.

19 Q. And that's the same number you have used in
20 the first column of Exhibit 53 for the year
21 2005?

22 A. That is correct.

23 Q. And similarly, with respect to the rest of
24 these pages, you have taken that information
25 and put it into the charts that are part of

1 Exhibit 55?

2 A. That's correct.

3 Q. I am sorry, I got to restate that.

4 You have taken the information from
5 Exhibit 5 and incorporated that into
6 Exhibit 53?

7 A. Right.

8 Q. And if we look at page 2 of Exhibit 55,
9 likewise, for the other years that are
10 shown, 2004, 2003, 2002, 2001, similarly,
11 those numbers have been incorporated into
12 Exhibit 53?

13 A. That is correct.

14 Q. And as we go through, on pages 4 through 6,
15 that shows the annual report for the year
16 2002?

17 A. Correct.

18 Q. And on page 5 of Exhibit 55, the annual
19 amounts indicated at the top for each year
20 have been taken from this document and
21 incorporated into Exhibit 53?

22 A. That is correct.

23 Q. And we could apply that same standard
24 throughout the rest of this document; is
25 that right?

1 A. That is right.

2 MR. BOYLE: Nothing further.

3 MR. ANISSIMOFF: Thank you very
4 much. I have no questions.

5 (Deposition concluded.)
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1 STATE OF MINNESOTA)
2) ss
3 COUNTY OF HENNEPIN)

4 Be it known that I took the
5 foregoing deposition;

6 That I was then and there a Notary
7 Public in and for the County of Hennepin,
8 State of Minnesota, and that by virtue
9 thereof, I was duly authorized to administer
10 an oath;

11 That the witness before testifying
12 was by me first duly sworn to testify the
13 whole truth and nothing but the truth
14 relative to said cause;

15 That the testimony of said witness
16 was recorded in Stenotype by myself and
17 transcribed into typewriting under my
18 direction, and that the deposition is a true
19 record of the testimony given by the witness
20 to the best of my ability;

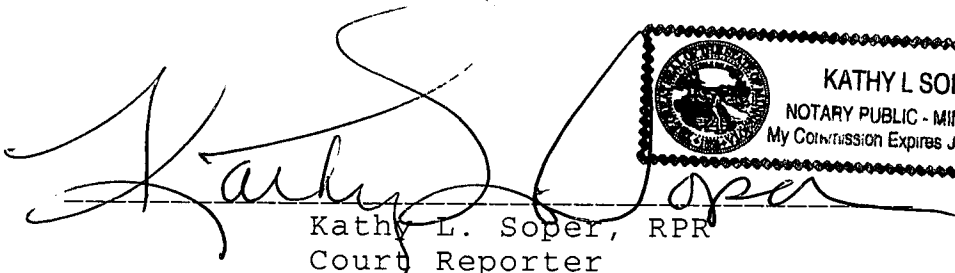
21 That I am not related to any of the
22 parties hereto nor interested in the outcome
23 of the action;

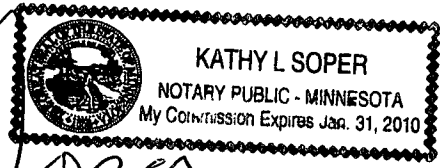
24 That the reading and signing of the
25 deposition by the witness was executed as
evidenced by the preceding page;

That Notice of Filing was waived.

19
20 WITNESS MY HAND AND SEAL THIS 19th
day of October, 2006.

21
22
23
24
25


Kathy L. Soper, RPR
Court Reporter



1 CASE: Digi International vs.
 2 DigiPos Systems
 3 WITNESS: BRENDA MUELLER
 4 DATE: October 17, 2006

5 I, BRENDA MUELLER, do hereby certify
 6 that I have read the foregoing transcript of
 7 my Deposition, and believe the same to be
 8 true and correct, (or, except as follows,
 9 noting the page and the line number of the
 10 change or addition desired and the reason
 11 why);

PAGE/LINE	CORRECTION	REASON
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

17 

18 BRENDA MUELLER

19 Dated Nov. 14, 2006

20
 21 Within 30 days, please send all other
 22 parties a copy of this correction sheet, and
 23 return the original to:

24 Mr. John Boyle
 25 Moss & Barnett
 90 S. 7th Street, Suite 4800
 Minneapolis, MN 55402

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3

4 -----
5 Digi International Inc.,

6 Opposer,

7 Opposition Number

8 vs.

91163719

9 Serial No. 76/561,585

10 DigiPos Systems Inc.

11 Applicant.
12 -----

ORIGINAL

13
14 DEPOSITION OF

15 JAN McBRIDE

16 October 17, 2006

17 9:00 a.m.
18
19
20
21
22
23

24 REPORTED BY: Kathy L. Soper, CSR, RPR

25 California CSR No. 8519

1 The Deposition of JAN McBRIDE, taken
2 pursuant to Notice of Taking Deposition,
3 taken before Kathy L. Soper, RPR, a Notary
4 Public in and for the County of Hennepin,
5 State of Minnesota, taken on October 17,
6 2006, at Moss & Barnett, located at
7 90 S. 7th Street, Suite 4700, Minneapolis,
8 Minnesota, commencing at approximately
9 9:00 a.m.

10
11 APPEARANCES:

12
13 JOHN P. BOYLE and MARSHA STOLT,
14 Attorneys at Law, of the Law Firm
15 MOSS & BARNETT, P.A., 90 S. 7th Street,
16 Suite 4700, Minneapolis, Minnesota 55402,
17 appeared for and on behalf of the Opposer.

18
19 SERGE ANISSIMOFF, Attorney at Law, of
20 the Law Firm ANISSIMOFF & ASSOCIATES,
21 Richmond North Office Central, Suite 201,
22 235 North Centre Road, London, Ontario
23 N5X 4E7, appeared for and on behalf of the
24 Applicant.
25

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1 JAN MCBRIDE,
2 called as a witness, was duly sworn and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. BOYLE:

7 Q. Ms. McBride, my name is John Boyle, as you
8 know, and I am an attorney who represents
9 Digi, and we are here today for your
10 deposition, which has been noticed, and you
11 are here today pursuant to that notice.

12 Let's get a little background on
13 you. Can you tell me what your position is
14 with Digi.

15 A. I am a director of worldwide communications.

16 Q. And how long have you held that position?

17 A. Since February 2003.

18 Q. And how long have you been with Digi?

19 A. Six years this November.

20 Q. What position did you hold at Digi prior to
21 your current position?

22 A. I was the director of marketing for Europe
23 and Asia.

24 Q. Did you hold any other positions with Digi?

25 A. No.

1 Q. So when you were hired with Digi, you came
2 on as director of marketing for Europe and
3 Asia?

4 A. Yes.

5 Q. And you said you have been with the company
6 for over six years?

7 A. Six years in November.

8 Q. Can you tell me what your responsibilities
9 were as director of marketing for Europe and
10 Asia?

11 A. I was responsible for all the channel
12 marketing, so the marketing with our
13 customers, the corporate marketing, the
14 advertising and trade shows, public
15 relations and the web sites.

16 Q. And what are your positions as director of
17 worldwide marketing and communications?

18 A. I am responsible for trade shows, press,
19 communication to our customers, the
20 corporate look and feel, corporate brand
21 management, the corporate web sites, so any
22 web site in any language.

23 Generally, most things you see with
24 a Digi logo.

25 Q. As part of your responsibilities, are you

1 aware of the markets that Digi is involved
2 in?

3 A. Yes.

4 Q. And are you knowledgeable of the products
5 that they sell?

6 A. Yes.

7 Q. And are you knowledgeable of the brand they
8 use?

9 A. Yes.

10 Q. Going back from just prior to starting at
11 Digi, can you kind of chronologically take
12 us back real quick through your prior
13 employment history.

14 A. Sure. I was associate director of marketing
15 for Advanced Data Net Networking for
16 Southwestern Bell based in San Antonio, in
17 Texas.

18 Before that I was a strategic
19 relationship manager for Anixter
20 International for their Nortel networks and
21 Cisco program.

22 Q. Can you tell us how long you were with each
23 of those two employers?

24 A. I was with Anixter for seven years, four
25 years in Europe and three years in Canada,

1 and then my business unit was bought out by
2 Southwestern Bell, hence the Southwestern
3 Bell connection there, and I was with
4 Southwestern Bell for a year and a half.

5 Q. Can you just briefly tell us what your areas
6 of responsibilities were in those two
7 positions.

8 A. For Anixter I was responsible for managing
9 the relationship with two of their largest
10 customers, Sisco and Nortel networks,
11 looking at the marketing in Canada, the
12 press, the trade shows, the public
13 relations, but also the stock pricing and
14 promotion for those products.

15 For Southwestern Bell I was
16 responsible for marketing their advanced
17 data networking which is there web hosting
18 and their Sisco router network in the
19 Southeastern USA working with the sales team
20 and with our partners to promote those
21 products to big corporate companies.

22 Q. And can you tell us briefly what your
23 educational background is.

24 A. I have a Bachelor of Science in electronics
25 and mathematics from the University of

1 London.

2 MR. ANISSIMOFF: If you will permit
3 me, when you were director for Europe and
4 Asia, where were you located at that time?

5 THE WITNESS: Dortmund in Germany.

6 MR. ANISSIMOFF: Thank you.

7 (Exhibit 33 marked for
8 identification.)

9 MR. ANISSIMOFF: In respect of the
10 documents that are being produced by counsel
11 today in their deposition, I would like to
12 make a general objection to the production
13 and use of any documents that have not been
14 previously disclosed and made available to
15 me.

16 So that's a comprehensive objection
17 to the introduction and use of those
18 documents, having regard to the answers
19 given on the Interrogatories and the
20 document production requests.

21 Subject to that objection, and with
22 all respect to counsel, they may proceed
23 with their documents.

24 MS. STOLT: I would guess that
25 many, if not most of these documents, have

1 been produced, but probably not all of them.

2 MR. BOYLE: Generally, these are
3 going to be documents off the web site?

4 MS. STOLT: Generally, they are
5 documents off the web site or public printed
6 publications.

7 MR. ANISSIMOFF: I have to justify
8 my trip to Minneapolis, you understand.

9 MS. STOLT: Understood.

10 (A discussion was held off the
11 record.)

12 MR. BOYLE: Just so the record is
13 clear, counsel made an objection, and I
14 confirmed with co-counsel, it's her belief
15 that many of these have been produced,
16 documents have been produced; perhaps not
17 all have, but generally what's going to be
18 used today are documents that are on the web
19 site, are generally available to the public.

20 But with that said, subject to the
21 objection of counsel.

22 MR. ANISSIMOFF: Thank you.

23 BY MR. BOYLE:

24 Q. Ms. McBride, showing you what's been marked
25 as Exhibit 33, do you recognize this

1 document?

2 A. Yes.

3 Q. What is that document?

4 A. It's from the About Us section of our
5 corporate web site.

6 Q. Oh, the About Us.

7 (A discussion was held off the
8 record.)

9 BY MR. BOYLE:

10 Q. And the items that are on Exhibit 33, are
11 these published on the Digi web site?

12 A. Yes.

13 Q. Now, I note at the beginning it says --
14 there is a reference to Digi, and there is a
15 reference that Digi International was
16 founded in 1985 as DigiBoard.

17 Do you understand that to be
18 correct?

19 A. Yes.

20 Q. And that the company went public as
21 Digi International in 1989 and was publicly
22 traded.

23 Do you understand that to be
24 correct?

25 A. Yes.

1 Q. If you turn to the second page of
2 Exhibit 33, there is a reference to the type
3 of products that are sold.

4 Is it your understanding this is a
5 correct listing of the products that are
6 sold by Digi?

7 A. Yes.

8 Q. And does Digi operate -- excuse me, let me
9 back up.

10 Are there other companies owned by
11 Digi?

12 A. Yes.

13 Q. Can you give me the names of those.

14 A. We have Rabbit Semiconductor and MaxStream.

15 Q. And those are, it looks like, referenced on
16 page 2 of Exhibit 33?

17 A. Yes, they are.

18 Q. So these products are marketed under the
19 Digi name, Rabbit Semiconductor and
20 MaxStream?

21 A. Yes, they are.

22 Q. Is Rabbit Semiconductor wholly-owned by
23 Digi?

24 A. Yes, it is.

25 Q. And is MaxStream wholly-owned by Digi?

- 1 A. Yes, it is.
- 2 Q. Does Digi also have an operation called
- 3 NetSilicon?
- 4 A. Yes.
- 5 Q. Is that a separate wholly-owned company?
- 6 A. It's actually Digi International now, but we
- 7 keep the NetSilicon brand for the products.
- 8 Q. At one time did it operate under the name
- 9 NetSilicon?
- 10 A. Yes, it did.
- 11 Q. As a wholly-owned subsidiary of Digi?
- 12 A. Yes, it did.
- 13 Q. And now they have changed the name so it
- 14 operates under the Digi International name.
- 15 A. Yes, they did.
- 16 Q. But they still put the brand name of
- 17 NetSilicon on the product?
- 18 A. Yes, we do.
- 19 Q. Does it also contain the Digi brand name on
- 20 the product?
- 21 A. Yes.
- 22 Q. And did the company at one time have a
- 23 wholly-owned subsidiary or company called
- 24 Inside Out Networks?
- 25 A. Yes, they did.

1 Q. And does the same thing apply there? Was
2 that a wholly-owned subsidiary of Digi?

3 A. Yes, it was.

4 Q. And has that also had its name changed?

5 A. Yes, it has.

6 Q. Does that also use the Inside Out Networks
7 logo?

8 A. Yes.

9 Q. Or mark?

10 A. On legacy products, not new products.

11 Q. And those legacy products where the Inside
12 Out Networks brand is still used, is the
13 Digi mark also used?

14 A. Yes.

15 Q. And it sounds like for new products produced
16 by Inside Out Networks, what was formerly
17 Inside Out Networks, those now just have the
18 Digi brand?

19 A. Yes, they do.

20 (Exhibit 34 marked for
21 identification.)

22 BY MR. BOYLE:

23 Q. Ms. McBride, going back, just in case I
24 didn't cover this.

25 We talked about two companies that

1 now -- that used to operate under a separate
2 name as a wholly-owned subsidiary, but now
3 operate under the Digi International name,
4 which are Inside Out Networks and
5 NetSilicon.

6 Do you recall that testimony?

7 A. Yes.

8 Q. And then we talked about there are still two
9 wholly-owned subsidiaries operating under
10 their names, which are Rabbit Semiconductor
11 and MaxStream; is that correct?

12 A. Yes, that's correct.

13 Q. With respect to those products of
14 Rabbit Semiconductor and MaxStream, do those
15 products also now display the Digi mark?

16 A. The logo now has a "Digi International
17 Company" underneath it, so there is
18 recognition of Digi, but not necessarily the
19 Digi logo.

20 Q. So, for instance, it will have the
21 Rabbit Semiconductor mark and then
22 underneath it, it will say "Digi
23 International"?

24 A. Yes.

25 Q. Showing you what's been marked as Deposition

1 Exhibit 34, do you recognize this document?

2 A. Yes, I do.

3 Q. Can you tell us what this is.

4 A. This is a Corporate Overview document that
5 explains who Digi is.

6 Q. And if we look at the second page of
7 Exhibit 34, which is identified at the top
8 as Digi Connectware, this makes reference to
9 Inside Out Networks and NetSilicon?

10 A. Yes.

11 Q. And as you identified earlier, those now
12 operate under the name Digi International?

13 A. Yes, they do.

14 Q. And then it looks like there is not a
15 reference here to the two additional
16 companies of Rabbit Semiconductor and
17 MaxStream?

18 A. That's right.

19 Q. Were those acquired since this publication
20 was prepared?

21 A. Yes, they were.

22 Q. Do you know approximately when this
23 publication was prepared, which is
24 Exhibit 34?

25 I think there is a copyright notice

1 at the back.

2 A. Yeah. It would have been 2004.

3 Q. The copyright shows 2003 to 2004.

4 A. Right.

5 Q. So it would have been published in that time
6 range?

7 A. Yes, it would have.

8 Q. Now, you have talked --

9 MR. ANISSIMOFF: Excuse me.

10 Whatever else may be said about the line of
11 questioning, I object to any effort or
12 attempt or any direction with respect to
13 introducing the, quotes, products of Inside
14 Out Networks, NetSilicon Rabbit
15 Semiconductor and MaxStream.

16 I have never understood that those
17 products are an issue here, and I am not
18 aware of what those products are, but I may
19 be premature in my objection.

20 But please go on, subject to my
21 objection.

22 BY MR. BOYLE:

23 Q. Okay. You may have -- you probably covered
24 this, but maybe we can do it a little more
25 comprehensively here with this document in

1 front of us.

2 Can you tell us how the Digi
3 housemark is used in conjunction with Inside
4 Out Networks at this time.

5 A. Inside Out Networks operates under the Digi
6 housemark.

7 Q. So on a new product put out right now, would
8 there be an Inside Out Networks mark on that
9 product?

10 A. No.

11 Q. Just Digi International?

12 A. Just Digi International.

13 Q. And with respect to NetSilicon, how is the
14 Digi mark used in connection with that
15 product?

16 A. Same as the Inside Out Networks, so the new
17 products have a Digi mark on them.

18 Q. Is that a change? Historically, were those
19 treated differently?

20 A. Yes, we changed it this year.

21 Q. How were they treated previously with
22 respect to Inside Out Networks and
23 NetSilicon?

24 A. They were treated as independent companies,
25 so they were marketed under Inside out

1 Networks and NetSilicon.

2 Q. On those products where the names were
3 used, was the Digi mark also used?

4 A. Yes, it said "Digi International Company."

5 Q. So, for instance, if it had the Inside Out
6 Networks mark, and then it would have
7 "Digi International" underneath it?

8 A. Yes. Actually, if you look on this document
9 on the Inside Out and the NetSilicon logo,
10 you can see a "Digi International Company."

11 Q. I see. So it was displayed as it is on this
12 exhibit?

13 A. Yes.

14 Q. So we see "Inside Out Networks," and then it
15 says "A Digi International Company" and
16 "NetSilicon, A Digi International Company."

17 A. Yes.

18 Q. That's the way those marks were treated up
19 until they were just changed in the past
20 year?

21 A. In March, yes.

22 Q. In March of 2006?

23 A. Yes.

24 Q. And are the Inside Out Networks and the
25 NetSilicon products which are now marked

1 under the Digi International name -- are
2 those marketed -- products -- are they
3 continued to be marketed by
4 Digi International?

5 A. Yes, they are.

6 Q. And are they in the Digi International
7 catalog?

8 A. Yes, they are.

9 Q. And are they in the Digi International web
10 site?

11 A. Yes, they are.

12 Q. And previously they would have been
13 identified under these marks that we see
14 here on Exhibit 34?

15 A. Yes.

16 Q. But those also previously -- prior to March
17 of this year, those products also would have
18 been displayed on the Digi International web
19 site?

20 A. Yes.

21 Q. And on the Digi International calendar --

22 A. Catalog.

23 Q. -- or excuse me, catalog, in the Digi
24 International catalog?

25 A. Yes, that's correct.

1 Q. And then, again, just to make sure we got
2 them all covered, can you tell us how the
3 Rabbit Semiconductor products are marked at
4 this time?

5 A. They are marked as "Rabbit Semiconductor, A
6 Digi International Company."

7 Q. So it would be similar to what we see on
8 page 2 of Exhibit 34?

9 A. Yes, that's correct.

10 Q. So it would say "Rabbit Semiconductor, A
11 Digi International Company"?

12 A. That's correct.

13 Q. Do you recall when Rabbit Semiconductor was
14 acquired?

15 A. It was May 2005.

16 Q. And has the product been marked as you have
17 just described since it's been acquired in
18 that way?

19 A. The actual -- trying to get my thoughts
20 together here.

21 The actual logo was changed the day
22 that we purchased Rabbit Semiconductor, so
23 the logo has been displayed on documentation
24 since then.

25 The products, themselves,

1 obviously, there is a little bit of lead
2 time.

3 Q. I see. Okay. So there may have been some
4 products already manufactured --

5 A. Right.

6 Q. -- that were sold under the old Rabbit
7 Semiconductor name, but as far as your
8 publications and any new products developed,
9 they would be under the new logo that would
10 identify the company as "A Digi
11 International Company"?

12 A. That's right.

13 Q. Would the same be true for MaxStream?

14 A. Yes.

15 Q. When was MaxStream acquired by
16 Digi International?

17 A. Approximately two months ago.

18 Q. So in that case it would say "MaxStream, A
19 Digi International Company," with respect to
20 publications and new products manufactured?

21 A. Yes, that's correct.

22 Q. But there may have been something through
23 the pipeline in inventory that still might
24 display the old logo?

25 A. That's correct, yes.

1 Q. If you will turn to page 3, or the third
2 page of Exhibit 34, which says "Vertical
3 Markets."

4 Can you tell me how many vertical
5 markets are identified in this document.

6 A. Six.

7 Q. And can you, just briefly, tell us, if we go
8 through these, what the industrial
9 automation vertical market is.

10 A. It's the ability to connect industrial
11 devices to the ethernet.

12 Q. Is that where it's primarily aimed, at
13 connection to the ethernet?

14 A. Absolutely, yes.

15 Q. How about retail point-of-sale vertical
16 market?

17 A. We focus on different sections of that
18 market. So it could be fast food
19 restaurants, so connectivity to displays in
20 fast food restaurants.

21 We also focus on some of the
22 products sold through systems integrators
23 internet market space to allow connectivity
24 for cash registers and point-of-sale
25 scanning devices.

1 Q. How about with respect to building
2 automation/security channel?

3 A. It's -- we sell some of our embedded
4 products and some of our camera products.
5 And the embedded products tend to go in the
6 key pads that you use or the scanning
7 devices that you use to come into a secured
8 building.

9 And then the cameras are used,
10 obviously, for camera applications to sense
11 movement at night.

12 Q. And how about with respect to medical/health
13 care vertical market?

14 A. We sell a lot of our products into the
15 wireless point of care market space, so when
16 they want to connect like blood sensor
17 machines or the heartbeat sensing machines
18 to stations, and rather than have a big
19 station in the room, it's wireless these
20 days. Makes it more portable.

21 Q. And how about with respect to the
22 out-of-band management vertical market?

23 A. It's the ability to manage large corporate
24 networks. So if you have multiple server
25 rooms in different locations, we have

1 specific products designed to manage all of
2 those locations from one point.

3 Q. And finally, how about with respect to the
4 office networking vertical market?

5 A. I actually don't know.

6 Q. Okay. That's an area you are not familiar
7 with?

8 A. No, I am not.

9 Q. But you understand that to be one of their
10 market segments?

11 A. Yes.

12 Q. If you will turn to the fourth page of
13 Exhibit 34, it appears that there is a
14 variety of diagrams. I would take it these
15 are supposed to show examples of the manner
16 in which the connectivity would occur with
17 each of the -- with respect to each of these
18 vertical markets?

19 A. Yes, that's correct.

20 Q. So for instance, in the upper right-hand
21 portion, there is a diagram for how there
22 would be connection on a retail
23 point-of-sale type of application?

24 A. Yes.

25 (A recess was taken and

1 Deposition Exhibit 35 was marked
2 for identification.)

3 BY MR. BOYLE:

4 Q. Showing you what's been marked as 35,
5 Ms. McBride, do you recognize that document?

6 A. Yes, I do.

7 Q. Can you tell me what that is.

8 A. This is a Google search for industrial
9 automation.

10 Q. As we can see identified at the top, the
11 search is "Digi International Automation"?

12 A. Yes.

13 Q. So when one does a Google search for
14 something related to Digi and then the term
15 "industrial automation," this is the result?

16 A. Yes, that's correct.

17 MR. ANISSIMOFF: Did the witness do
18 the search?

19 THE WITNESS: No, I didn't.

20 BY MR. BOYLE:

21 Q. Are you familiar with how to do a Google
22 search?

23 A. Yes, I am.

24 MR. ANISSIMOFF: Just wondering how
25 this witness can answer questions about a

1 document she has never seen before; may have
2 seen before, just moments, a search she
3 didn't do, so the mental element is not
4 there.

5 And finally, I am not sure that
6 there is anything factual that she can
7 recount arising from the document.

8 So I need to object to this
9 document.

10 MR. BOYLE: I understand.

11 BY MR. BOYLE:

12 Q. For purposes of this Google search, which is
13 in Exhibit 35, when one enters
14 "Digi International industrial automation,"
15 is Digi International identified in the
16 returns that come back?

17 A. Yes, it is.

18 Q. Let's just mark all these in order.

19 MR. ANISSIMOFF: Again, perhaps --
20 I don't mean to be obtuse, but if we are
21 going to have the witness read from a
22 document, I don't think that's useful at
23 all, and I am not sure that she can add
24 anything -- the witness can add anything to
25 what's here.

1 The document speaks for itself.

2 MR. BOYLE: That's why I am going
3 to speed up the process here.

4 MR. ANISSIMOFF: And finally, I am
5 prepared to hear evidence about the
6 witness's greater ability to search on
7 Google, but I am not sure her expertise to
8 do so is at issue here.

9 (A discussion was held off the
10 record.)

11 BY MR. BOYLE:

12 Q. Ms. McBride, moving on to a different
13 subject, we will return later to the Google
14 searches, can you describe what the channels
15 are, the three channels that Digi sells
16 through.

17 A. Distributors, resellers and OEMs.

18 Q. And can you tell us what the difference is
19 between a distributor and a reseller.

20 A. A distributor would hold large amounts of
21 stock.

22 Q. And a reseller uses it more in a particular
23 application?

24 A. Yes, very specifically focused, they are
25 very application-focused and they deal

1 directly with the end customer.

2 Q. So I take it a distributor may hold
3 inventory or stock that they would sell to
4 buyers; is that right?

5 A. Yeah, they would sell them to resellers.

6 Q. And then the resellers actually just buy
7 what they need to complete a particular
8 project for a customer?

9 A. Yes, that's correct.

10 Q. And then does the company also sell product
11 to original equipment manufacturers?

12 A. Yes, it does.

13 Q. So that would be a third channel?

14 A. Yes.

15 Q. Can you tell me -- describe how the products
16 are sold by each of these three types of
17 channels?

18 A. Could you --

19 Q. Could you tell me how the products are sold
20 by Digi to each of these three types of
21 channels.

22 A. I am not understanding.

23 Q. All right. Let me rephrase.

24 With respect to the three ways in
25 which the product is identified or you just

1 described, can you tell me how Digi sells
2 the product.

3 A. To distributors, we sell directly to
4 distributors; there is a distributor sales
5 team.

6 Their job is to work with the
7 distributor to look at which marketplaces
8 that they are focused on. Some distributors
9 are also very focused in the spaces.

10 And then they work with them to
11 look at the specific products and the
12 quantity of products that distributor should
13 stock, focused on the market needs.

14 For an OEM, an original equipment
15 manufacturer, the products tend to be part
16 of a solution that's being manufactured, and
17 so they would be inside of their product,
18 and quite probably rebranded as part of that
19 solution, so they may not appear as Digi
20 products; they may or they may not.

21 For a reseller, we work directly
22 with resellers to focus on our specific
23 target markets and different solutions that
24 are sold directly to the end customer.

25 Although we don't sell directly to

1 them, they still buy directly from the
2 distributor. We may work closely with them.

3 Q. Can you tell us specifically how products
4 are marketed in the point-of-sale sector.

5 A. Yes. Point-of-sale is a big focus area for
6 us. We tend to market directly to the end
7 customer, so we would market a product
8 online, web applications, so online
9 publications and print publications, at
10 retail focus trade shows.

11 We have a retail section of our web
12 site, and we also have a very specific
13 retail-focused newsletter that gets sent out
14 every six weeks.

15 And we talk to editors in the
16 retail press, as well. We are always
17 writing articles.

18 (Exhibit 36 marked for
19 identification.)

20 BY MR. BOYLE:

21 Q. Showing you what's been marked as Deposition
22 Exhibit 36, do you recognize this document?

23 A. Yes, I do.

24 Q. And can you tell us what this is.

25 A. This is our electronic HTML newsletter

1 focused on the retail space.

2 Q. And to whom is this newsletter -- electronic
3 newsletter directed?

4 A. End users, so end customers who have
5 specifically requested information on our
6 products in this space from us.

7 Q. Is this a publication that you publish on a
8 regular basis?

9 A. Every six weeks.

10 Q. Do you have any idea approximately how many
11 customers or potential customers receive
12 this electronic newsletter?

13 A. Yes. It goes to approximately 10,000
14 customers worldwide every six weeks.

15 Q. Now, I see at the very top there is a
16 reference to Volume 1, Issue 2, Spring of
17 2004?

18 A. Yes.

19 Q. So I take it that would be the second issue
20 published in that year for this electronic
21 newsletter?

22 A. Yes, that's correct.

23 Q. And then it has below, I think in the second
24 paragraph, "Digi International has been
25 providing retail device connectivity for

1 15-plus years."

2 A. Yes, that's correct.

3 Q. Is that an accurate statement?

4 A. Yes, it is.

5 Q. And can you tell me the purpose for this
6 electronic newsletter. Why does Digi send
7 it out?

8 A. We use it to educate our customers, or
9 potential customers, on the solutions that
10 we are providing in the retail market on
11 some of the applications that we are doing
12 and, also, new products that are coming out
13 that are applicable.

14 (Exhibit 37 marked for
15 identification.)

16 BY MR. BOYLE:

17 Q. Showing you what's been marked as
18 Exhibit 37, do you recognize this document?

19 A. Yes, I do.

20 Q. And can you tell us what this is.

21 A. Could I tell you what it is?

22 Q. What it is, right.

23 A. It's a copy of a Retail Connections
24 newsletter.

25 Q. So it's another issue of what we saw in

1 Exhibit 36?

2 A. Yes, it is.

3 Q. Published in the summer of 2004?

4 A. Yes, it is.

5 Q. And this, likewise, would go to the 10,000
6 or so recipients you previously described?

7 A. Yes, that's correct.

8 Q. I see at the very top, the first item, "What
9 a Success," in the paragraph it makes
10 reference to a "Retail Systems 2004" in May?

11 A. Yes.

12 Q. That apparently something was exhibited an
13 at that program. Can you tell us what the
14 program was?

15 A. Actually, Retail Systems is a retail-focused
16 trade show that's held in Chicago every year
17 for three days.

18 Q. And I take it Digi was present at that
19 retail show?

20 A. Yes, that's correct.

21 Q. And what did Digi do while it was there?

22 A. We have a trade show booth where we exhibit
23 our products and applications for the retail
24 market.

25 Q. Has Digi attended this retail system show in

1 other years besides 2004?

2 A. Yes. We have attended it since 2002, to my
3 knowledge.

4 (Exhibit 38 marked for
5 identification.)

6 BY MR. BOYLE:

7 Q. Going back, if I recall your description of
8 what your role is at Digi, you are involved
9 with trade shows?

10 A. Yes, I am.

11 Q. Showing you Exhibit 38, do you recognize
12 this document?

13 A. Yes, I did.

14 Q. Can you tell us what this is.

15 A. This is a press release that we did to
16 announce that we were chosen as a finalist
17 at Comdex, which is a trade show.

18 Q. Where was that trade show located?

19 A. I think it's Las Vegas.

20 Q. This looks like it was -- do you recall when
21 this trade show occurred?

22 A. 2002.

23 Q. And it looks like the press release is dated
24 November 24, 2002?

25 A. Yes, that's correct.

1 Q. And the trade show would have occurred
2 before that date?

3 A. It would have occurred as this was going on,
4 yes.

5 Q. And can you tell us what -- it indicates
6 Digi International were finalists for the
7 BESS awards AnywhereUSB -- I am sorry, I
8 misstated that, were finalists for the BESS
9 awards.

10 Can you tell us what the BESS
11 awards refers to.

12 A. It was for innovative technology introduced
13 that year.

14 Q. And what product was it that Digi introduced
15 that made it a finalist for that award?

16 A. It was the AnywhereUSB product, and the
17 Watchport series of cameras.

18 Q. Are the AnywhereUSB products and the
19 Watchport products produced by Digi involved
20 in the point-of-sale market?

21 A. Yes, they are.

22 Q. So I take it those two types of equipment,
23 AnywhereUSB and Watchport, are marketed to
24 clients who need point-of-sale applications?

25 A. Yes, that's correct.

(Exhibit 39 marked for
identification.)

BY MR. BOYLE:

Q. Ms. McBride, going back to your earlier testimony about your responsibilities, do press releases fall under your area of responsibility?

A. Yes, they do.

Q. Showing you Exhibit 39, do you recognize that document?

A. Yes, I do.

Q. Is that also a press release?

A. Yes, it is.

Q. And that appears to be dated November 17, 2003?

A. That's correct.

Q. And it looks like this refers to Digi making a point-of-sale presentation at another conference; is that right?

A. That's correct.

Q. Can you tell me what conference that was?

A. It was at Comdex.

Q. And it appears to have been in Las Vegas in 2003?

A. Yes, that's correct.

1 Q. And can you tell us what products Digi
2 showcased that related to the point-of-sale
3 market?

4 A. We were showcasing a brand new product at
5 the time. It's USB Plus Power products.

6 Q. And those are marketed for point-of-sale
7 applications?

8 A. Specifically for point-of-sale.

9 (Exhibit 40 marked for
10 identification.)

11 MR. ANISSIMOFF: Just so I can
12 follow, Exhibits 38, 39 and now 40, are they
13 from the web site?

14 MS. STOLT: Yes.

15 BY MR. BOYLE:

16 Q. Showing you what's been marked as
17 Exhibit 40, Ms. McBride, do you recognize
18 this document?

19 A. Yes, I do.

20 Q. Can you tell us what this is.

21 A. It's a press release launching the USB Plus
22 Power series of products.

23 Q. And this press release is dated October 13,
24 2003?

25 A. That's correct.

1 Q. And is this the same USB Plus series product
2 that was identified or described in
3 Exhibit 39?

4 A. Yes, that's correct.

5 Q. And as you indicated, this product was --
6 it's directed at the point-of-sale market?

7 A. Yes, that's correct.

8 (Exhibit 41 marked for
9 identification.)

10 BY MR. BOYLE:

11 Q. Showing you, Ms. McBride, Deposition
12 Exhibit 41.

13 Do you recognize this document?

14 A. Yes, I do.

15 Q. Can you tell us what this is.

16 A. This is a press release announcing our
17 relationship with ScanSource.

18 Q. Can you tell us what the relationship with
19 ScanSource is.

20 A. ScanSource are a reseller of Digi products
21 specifically for the point-of-sale arena.

22 Q. That's their market area?

23 A. Yes.

24 Q. And this press release is dated May 17th,
25 2004?

1 A. Yes, that's correct.

2 Q. And does the press release make specific
3 reference to the type of products that are
4 going to be marketed by ScanSource in
5 cooperation with Digi?

6 A. Yes, that's correct.

7 Q. Can you tell us which products.

8 A. It's a USB Plus series, Power, the Edgeport
9 USB serial convertors, Digi multi-port
10 serial cards, PortServer TS device servers,
11 and WaveSpeed S Bluetooth wireless serial
12 adapters.

13 Q. And all those products have application on
14 the point-of-sale market?

15 A. Yes, they do.

16 Q. And are those products marketed or sold by
17 ScanSource?

18 A. Yes, they are.

19 MR. BOYLE: Why don't we take about
20 a five-minute break. We will get organized
21 and move on.

22 (A recess was taken and
23 Exhibit 42 marked for
24 identification.)

25 BY MR. BOYLE:

1 Q. Ms. McBride, showing you what's been marked
2 as Deposition Exhibit 42, do you recognize
3 this document?

4 A. Yes, I do.

5 Q. Can you tell me what this is.

6 A. It's a list of our registered trademarks
7 that get sent to me once a quarter.

8 Q. And this provides you an update on the Digi
9 trademarks each quarter?

10 A. Yes, that's correct.

11 Q. And are you familiar with all the marks that
12 are identified in this list of marks, which
13 is Exhibit 42?

14 A. I am just looking.

15 Yes, I am.

16 Q. Are all these marks currently in use by
17 Digi?

18 A. To my knowledge, yes.

19 Q. And have the marks been used continuously
20 since they were adopted?

21 A. Yes, that's correct.

22 Q. Among the marks that are listed on
23 Exhibit 42, is one of them "Digi and
24 Design"?

25 A. Yes, it is.

1 Q. Is another mark that's displayed on
2 Exhibit 42 "Digi"?

3 A. Yes, that's correct.

4 Q. Is another mark that's displayed
5 "Digi International"?

6 A. Yes, that's correct.

7 (Exhibit 43 marked for
8 identification.)

9 BY MR. BOYLE:

10 Q. Showing you what's been marked as
11 Exhibit 43, do you recognize this document?

12 A. Yes, I do.

13 Q. Can you tell me what it is.

14 A. It's Notification of our Trademark
15 Registration for Digi.

16 Q. And what was the date?

17 A. February 22nd, 2000.

18 Q. On Exhibit 43, does it also indicate a first
19 use date?

20 MR. ANISSIMOFF: I am just
21 wondering about the usefulness of having
22 this talented witness read from a document.

23 I mean, I am just objecting to
24 possibly the waste of time, unless any
25 questions will be arising from it.

1 This document speaks for itself.

2 BY MR. BOYLE:

3 Q. Are you aware that there was a first use of
4 the Digi mark well before February 22nd of
5 2000?

6 A. Yes.

7 (Exhibit 44 marked for
8 identification.)

9 BY MR. BOYLE:

10 Q. Showing you what's been marked as Deposition
11 Exhibit 44, do you recognize this document?

12 A. Yes, I do.

13 Q. Can you tell me what this is.

14 A. It's notification of our trademark for
15 Digi International.

16 Q. And Digi International is one of the
17 trademark names listed on Exhibit 42?

18 A. Yes, that is correct.

19 Q. Can you tell me the registration date for
20 Digi International.

21 A. January 27th, 1988.

22 Q. And did this, likewise, have a use in
23 commerce that preceded that date?

24 A. Yes, to my knowledge.

25 Q. Has the Digi International mark been used

1 continuously since its first use?

2 A. Yes, it has.

3 Q. And has it been used continuously since its
4 registration?

5 A. Yes, it has.

6 MR. ANISSIMOFF: With respect, the
7 witness doesn't know that, that's her
8 information and belief, but as a question of
9 fact, she wouldn't know that because she
10 wasn't with the company back then.

11 And I am not trying to put too fine
12 a point on it, but I think we need to be
13 careful about asking questions that are
14 eliciting hearsay answers from the witness.

15 And if I am wrong, I apologize.

16 BY MR. BOYLE:

17 Q. As part of your duties at Digi, are you
18 aware of the use of the mark?

19 A. Yes, I am.

20 Q. And based on your work experience and your
21 knowledge of that, are you aware of the
22 periods of continuous uses for these marks,
23 historically?

24 A. Yes, I am.

25 Q. And as a result, would you know, based on

1 the information you have and your
2 responsibilities as you testified here
3 today, of the continuous use of that mark?

4 A. Yes, I am.

5 (Exhibit 45 marked for
6 identification.)

7 BY MR. BOYLE:

8 Q. Showing you what's been marked as Deposition
9 Exhibit 45, do you recognize this document,
10 Ms. McBride?

11 A. Yes, I do.

12 Q. Can you tell me what this is.

13 A. This is notification of our registered
14 trademark for our Digi logo.

15 Q. And was the registration date for this
16 February 22nd, 1996?

17 A. November 26th, 1996.

18 Q. I am sorry, I misread that. November 26th,
19 1996?

20 A. Yes, that's correct.

21 Q. And based on your work experience, do you
22 understand that this mark was used prior to
23 the registration date?

24 A. To the best of my knowledge.

25 Q. And has the mark been used continuously

1 since its registration to today?

2 A. To the best of my knowledge, yes.

3 Q. Ms. McBride, with respect to the use of
4 marks by Digi, do those marks appear on all
5 products?

6 A. Yes, they do.

7 Q. Do those marks appear on all packaging?

8 A. Yes, they do.

9 (Exhibit 46 marked for
10 identification.)

11 BY MR. BOYLE:

12 Q. Showing you what's been marked as Deposition
13 Exhibit 46, do you recognize that document?

14 A. Yes, I do.

15 Q. Can you tell us what that is.

16 A. It's the box that one of our multi-port
17 serial products is shipped in.

18 Q. Is Exhibit 46 typical of the type of marking
19 that Digi puts on its packaging?

20 A. Yes, it is.

21 Q. And in your experience, how long has Digi
22 been using this type of marking on its
23 packaging?

24 A. I can't answer that.

25 Q. You are aware that that's how they do it

1 now?

2 A. Yes.

3 Q. Does Digi use its mark on its product data
4 sheets?

5 A. Yes, it does.

6 MR. ANISSIMOFF: Again, I think all
7 those documents speak for themselves, and I
8 am content to agree to that with respect to
9 your question.

10 MR. BOYLE: All right. We were
11 going to just simply have her indicate that
12 the product exhibits -- data sheets which
13 are -- let me back up.

14 We were going to have her indicate
15 that based on her responsibilities and
16 knowledge of the history at the company,
17 that the data sheets which are on
18 Exhibits 21 to 26 show the Digi mark and
19 that they were published on the copyright
20 dates indicated on those documents.

21 MR. ANISSIMOFF: And shown on the
22 documents that you are referring to?

23 MR. BOYLE: Correct.

24 MR. ANISSIMOFF: I will stipulate
25 to that.

1 MR. BOYLE: Likewise, we were going
2 to have her simply indicate, based on her
3 knowledge and her experience and her
4 responsibilities, that the newer data
5 sheets, which are -- which were identified
6 yesterday as Exhibits 27 to 30 --

7 MS. STOLT: Those were actually
8 something different.

9 MR. BOYLE: Let's back up.

10 We were going to have her indicate,
11 based on her experience, that the data
12 sheets for Digi identified in Exhibit 27
13 reflect the Digi mark and that their
14 publication dates are as indicated on the
15 copyright notices on each of those.

16 MR. ANISSIMOFF: Again, as shown on
17 each of those documents, agreed.

18 BY MR. BOYLE:

19 Q. Based on your experience, is the Digi mark,
20 or some Digi-related mark, shown on all the
21 instructions and installation materials from
22 products?

23 A. Yes, that's correct.

24 (Exhibit 47 marked for
25 identification.)

1 BY MR. BOYLE:

2 Q. Showing you what's been marked as Deposition
3 Exhibit 47, do you recognize this document?

4 A. Yes, I do.

5 Q. Can you tell us what this is.

6 A. It's an example of the Installation Guide
7 that goes in one of our product packages.

8 Q. And this is an Installation Guide for the
9 Digi Neo product?

10 A. Yes, that's correct.

11 Q. And this is an example of how the Digi logo
12 was shown on those installation guides?

13 A. Yes, that's correct.

14 Q. Does the Digi Neo product have a POS
15 application?

16 A. Yes, it does.

17 Q. And do you know the date of this software
18 Installation Guide for Digi Neo?

19 A. Not precisely. I can tell you when the
20 product was introduced.

21 Q. If you turn to the third page of Exhibit 47,
22 I think it reflects a copyright date.

23 A. Right.

24 Q. Is that typically when the publication date
25 is, when the copyright date is reflected?

1 A. Yes.

2 Q. Is a Digi-related mark shown on the web site
3 for Digi?

4 A. Yes, that's correct.

5 MR. ANISSIMOFF: I am sorry, what
6 was that last question? I don't understand
7 it.

8 MR. BOYLE: Is the Digi mark or
9 related mark shown on the web site?

10 MR. ANISSIMOFF: What mark? For
11 example, the mark -- Exhibits 43, 44, 45?

12 MR. BOYLE: Yes.

13 MR. ANISSIMOFF: No problem.

14 (Exhibit 48 marked for
15 identification.)

16 BY MR. BOYLE:

17 Q. Showing you what's been marked as Deposition
18 Exhibit 48, do you recognize that document?

19 A. Yes, I do.

20 Q. Can you tell us what this is.

21 A. It's a guide that we published to talk about
22 our OEM program at Digi.

23 Q. And does the document reflect the
24 publication date of this document?

25 A. Yes, it does.

1 Q. And what's that date?

2 A. It's January 1996.

3 Q. And this document, likewise, reflects the
4 Digi logo?

5 A. Yes, it does.

6 Q. Or displays the Digi logo?

7 A. Yes, it does.

8 Q. And does it also indicate
9 "Digi International" at the top?

10 A. Yes, it does.

11 Q. And "Digi Operations"?

12 A. Yes, it does.

13 Q. I am showing you what was marked yesterday
14 as Deposition Exhibit 27, and just ask you
15 if you recognize the first page of
16 Exhibit 27.

17 A. Yes, I do.

18 Q. Can you tell us what that is.

19 A. It's the home page of our corporate web
20 site.

21 Q. And does that, likewise, reflect the Digi
22 logo?

23 A. Yes, it does.

24 Q. Are the Digi marks indicated on product
25 catalogs produced by Digi?

1 A. Yes, they are.

2 MR. ANISSIMOFF: Hopefully this is
3 not too interruptive, but I guess, again,
4 are we speaking about the marks Exhibit 43,
5 44, 45 when you refer to "Digi marks,"
6 counsel?

7 Is that what you are referring to
8 when you say "Digi marks"?

9 MR. BOYLE: For instance, on
10 Exhibit 27 there is the Digi mark in the
11 upper left-hand corner, which is in the
12 green box. That's what I am referring to on
13 that one.

14 MR. ANISSIMOFF: Thank you.

15 (Exhibit 49 marked for
16 identification.)

17 BY MR. BOYLE:

18 Q. I was asked by counsel to clarify
19 Exhibit 47. I had you identify the front
20 page.

21 Just to be clear, the front page of
22 the Digi web site contains the Digi logo,
23 which is in the green box, which is at the
24 upper left-hand side?

25 A. Yes, that's correct.

1 Q. And it also makes reference on that page to
2 "Digi International"; is that correct?

3 A. Yes, that's correct.

4 Q. Showing you what's been marked as Deposition
5 Exhibit 49, do you recognize this document?

6 A. Yes, I do.

7 Q. Can you tell us what this document is.

8 A. It's our product catalog for the year 2002.

9 Q. And does this product catalog also contain
10 the Digi logo, which is in the green box?

11 A. Yes, that's correct.

12 Q. Does it also contain references to
13 Digi International?

14 A. Yes, it does.

15 Q. If you will turn to page 21 of this
16 document. There is a diagram at Exhibit --
17 or excuse me. There is a diagram to the
18 right of page 21 of Exhibit 49.

19 Does that show a description of a
20 point-of-sale application?

21 A. Yes, it does.

22 Q. And back to the first page of Exhibit 49,
23 for this product catalog, it indicates a
24 date on the first page of 2002; is that
25 correct?

1 A. That's correct.

2 (Exhibit 50 marked for
3 identification.)

4 BY MR. BOYLE:

5 Q. I am going to show you what's been marked
6 Deposition Exhibit 50.

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. Can you tell me what this is.

10 A. This is our product catalog for the year
11 2004.

12 Q. And the catalog, which is Exhibit 50, shows
13 the date of 2004 on the front?

14 A. Yes, it does.

15 Q. And on the first page it makes reference to
16 the Digi logo, which is in the green box?

17 A. Yes, that's correct.

18 Q. And, also, to Digi International?

19 A. Yes, that's correct.

20 Q. If you would turn to page 34 of Exhibit 50.
21 And look at the diagram to the right.

22 Does it make reference to a retail
23 point-of-sale application?

24 A. Yes, it does.

25 Q. If you would turn to the next page of

1 Exhibit 50, which is page 36, there is
2 reference to Watchport sensors?

3 A. Yes, that's correct.

4 Q. Are those used on a point-of-sale
5 application?

6 A. Yes, they are.

7 MR. ANISSIMOFF: One moment,
8 please. I don't have 36.

9 BY MR. BOYLE:

10 Q. If you go back to page 32 of Exhibit 50,
11 there is reference to the Edgeport product?

12 A. Yes, that's correct.

13 Q. And is the Edgeport product sold by Digi
14 used in a point-of-sale application?

15 A. Yes, it is.

16 Q. Is the Digi logo and the Digi International
17 mark used on published white papers?

18 A. Yes, they are.

19 Q. Are they used at trade show exhibitions?

20 A. Yes, they are.

21 (Exhibit 51 marked for
22 identification.)

23 BY MR. BOYLE:

24 Q. Showing you what's been marked as Deposition
25 Exhibit 51, do you recognize this document?

1 A. Yes, I do.

2 Q. And can you tell us what this is.

3 A. This is our Digi product catalog for the
4 year 2005.

5 Q. And it's marked "Product Catalog 2005"?

6 A. Yes, that's correct.

7 Q. And the first page of Exhibit 51 displays
8 the Digi logo in the green box?

9 A. Yes, that's correct.

10 Q. And on the second page of Exhibit 51, is
11 there direct reference to
12 Digi International?

13 A. Yes, that's correct.

14 Q. And, also, at the top of Exhibit 51 is there
15 a reference to Digi's web site, which is
16 Digi.com?

17 A. Yes, that's correct.

18 Q. There is some products displayed on the
19 front page of the product catalog for 2005,
20 which is Exhibit 51.

21 Do those products have
22 point-of-sale applications?

23 A. Most of them, yes.

24 Q. Can you tell me which ones that you see have
25 point-of-sale applications.

1 A. The Edgeport, the Digi Connect Y SP, the
2 Digi Connect One, the Acceleport Xe M and
3 the Digi Connect ME.

4 Q. Are there other products reflected inside
5 the catalog that aren't shown on the front
6 page that have point-of-sale applications?

7 A. Yes, that's correct.

8 Q. Can you tell us, generally, what those are.

9 A. Yes. The PortServer range of products, the
10 Digi One Device Server range of products,
11 the wireless PortServer, TSW, and the
12 PortServer TS2, TS8, TS16, and the EtherLite
13 product.

14 And on the next page, the USB
15 products, where it says "USB connectivity."

16 All of the USB products are sold
17 into point-of-sale.

18 Q. Is the Digi logo or the Digi International
19 name used on solution guides which are
20 provided by Digi?

21 A. Yes, that's correct.

22 Q. Showing you what was marked yesterday as
23 Exhibit 28, do you recognize this document?

24 A. Yes, I do.

25 Q. Can you tell us what that is.

1 A. It's a Device Server Solution Guide.

2 Q. And similar to my previous questions, the
3 front page of that document, Exhibit 28,
4 reflects the Digi logo in the green box?

5 A. Yes, it does.

6 Q. And it makes reference to the Digi web site,
7 Digi.com?

8 A. Yes, it does.

9 Q. And does the document, which is Exhibit 28,
10 make reference to POS applications?

11 A. Yes, it does.

12 Q. And can you tell me how a document such as
13 Exhibit 28 is used by Digi.

14 A. It's used by our salespeople and, also, our
15 channel partners to promote products into
16 these vertical markets.

17 Q. Just so we are clear, we have kind of used
18 point-of-sale and POS interchangeably.

19 POS is the acronym for
20 point-of-sale?

21 A. Yes, it is.

22 Q. Showing you Deposition Exhibit 29, which was
23 introduced yesterday, do you recognize that
24 document?

25 A. Yes, I do.

1 Q. Can you tell us what that is.

2 A. It's an application guide for point-of-sale.

3 Q. And the front page of Exhibit 29, likewise,
4 reflects the Digi logo inside the green box?

5 A. Yes, that's correct.

6 Q. And it makes reference to the Digi web site,
7 Digi.com?

8 A. Yes, that's correct.

9 Q. Can you tell me the purpose of this catalog.

10 A. It's to show true life applications where
11 our products are used in the point-of-sale
12 market.

13 Q. I used the word "catalog," but it's actually
14 Application Guide; is that correct?

15 A. Yes, that's correct.

16 Q. And does the entire document actually relate
17 to point-of-sale applications?

18 A. Yes, that's correct.

19 Q. Okay. I previously asked you whether the
20 Digi logo and mark are used at trade show
21 exhibits, and you said they are?

22 A. Yes, that's correct.

23 (Exhibit 52 marked for
24 identification.)

25 BY MR. BOYLE:

1 Q. Showing you what's been marked as
2 Exhibit 52, do you recognize this series of
3 documents?

4 A. Yes, I do.

5 Q. Can you tell me what these documents relate
6 to.

7 A. These are web sites of current exhibitions
8 that Digi are due to exhibit at.

9 Q. Okay. At the front of Exhibit 52, there are
10 several pages that relate to a remote site
11 and equipment management program.

12 Can you tell us what that was.

13 A. It's a trade show due to take place in
14 November in California focused on remote
15 monitoring and networking.

16 Q. And is Digi going to participate in that
17 conference?

18 A. Yes, that's correct.

19 Q. And will Digi display its products at that
20 conference?

21 A. Yes, it will.

22 Q. And will it display its logo in name at the
23 conference?

24 A. Yes, it will.

25 Q. There is a second set of papers in

1 Exhibit 52 which are clumped together, which
2 refer to the GTEC, G-T-E-C, Restart 06?

3 A. Yes, that's correct.

4 Q. Can you tell me what that relates to.

5 A. It's a trade show in Canada that Digi will
6 be present at.

7 Q. And, likewise, Digi will present its
8 products and display its name and trademark?

9 A. Yes, it will.

10 Q. There is a third group of documents in
11 Exhibit 52, which refers to the WEFTEC,
12 W-E-F-T-E-C --

13 A. Yes.

14 Q. -- exhibition and conference.

15 Can you tell us what that is.

16 A. It's a wastewater management exhibition that
17 Digi will exhibit at.

18 Q. And, again, it will exhibit its products and
19 name and logo?

20 A. Yes.

21 Q. The next clump of documents in Exhibit 52
22 relate to the FSTEC conference.

23 A. Yes.

24 Q. Can you tell us what that relates to.

25 A. Yes. It's a very focused trade show, based

1 on certain aspects of the retail marketplace
2 that Digi will exhibit at this year.

3 Q. And, likewise, will display its name and
4 logo?

5 A. Yes, that's correct.

6 Q. And finally, at the end of Exhibit 52, there
7 is a group of documents that relate to the
8 Rockwell Automation Fair 2006.

9 A. Yes, that's correct.

10 Q. Can you tell us what that relates to.

11 A. It's a trade show sponsored by Rockwell
12 Automation that Digi will exhibit at this
13 year.

14 Q. And likewise, display its name and logo?

15 A. Yes, that's correct.

16 Q. Does Digi use promotional items to market
17 its products?

18 A. Yes, it does.

19 Q. Is the name and logo displayed on those
20 promotional items?

21 A. Generally, the green box logo.

22 Q. So the Digi that's in the green box?

23 A. Yes, that's correct.

24 Q. Does Digi use its logo or reference to its
25 name on its buildings?

1 A. Yes, it does.

2 Q. Are there any other ways that you can think
3 of in which Digi uses its mark or its name?

4 A. We use our name and our green box mark on
5 all of our letterhead, all of our invoices
6 that go out to our customers, all of our
7 business cards.

8 MR. ANISSIMOFF: Could I get copies
9 of those, please?

10 MS. STOLT: Yes.

11 MR. ANISSIMOFF: Thank you.

12 BY MR. BOYLE:

13 Q. We looked at the FSTEC conference in
14 Exhibit 52 that relates to food service
15 technology.

16 Would that involve displaying
17 point-of-sale products?

18 A. Yes, it would.

19 Q. So Digi would display some of its
20 point-of-sale products at that conference?

21 A. Yes, that's correct.

22 Q. Does Digi own the domain name www.digi.com?

23 A. Yes, it does.

24 Q. And does Digi host an active web site at
25 that address?

1 A. Yes, we do.

2 Q. And I believe we previously looked at
3 Exhibit 27, or the first page of that web
4 site?

5 A. Yes, that's correct.

6 Q. With respect to the trade name www.digi.com,
7 does Digi own a registration for that name?

8 A. I don't know.

9 MR. ANISSIMOFF: Well, if it's on
10 your maiden list, I am okay with that.

11 THE WITNESS: Don't tell my boss.

12 MR. ANISSIMOFF: I finally found a
13 crack in the case.

14 THE WITNESS: I thought you liked
15 me.

16 BY MR. BOYLE:

17 Q. And as reflected on some documents that we
18 have already seen, does Digi provide an
19 online catalog at the site www.digi.com?

20 A. Yes, we do.

21 Q. And it actively markets and sells its
22 product on that web site?

23 A. Yes.

24 Q. And that web site displays the Digi logo and
25 the Digi International name?

1 A. Yes, that's correct.

2 Q. Does Digi place trade journal ads?

3 A. Yes, we do.

4 Q. And is the Digi mark and name used in those
5 trade show ads?

6 A. Yes, that's correct.

7 MR. BOYLE: I guess that's it for
8 now. We are trying to get you on your
9 airplane.

10 MR. ANISSIMOFF: You are the most
11 accommodating bunch I have come across in a
12 long time.

13 (A recess was taken.)

14

15

EXAMINATION

16

BY MR. ANISSIMOFF:

17 Q. Do you have a CV or curriculum vitae
18 describing in greater detail your
19 qualifications and your experience?

20 A. Yes, I do.

21 Q. Subject to counsel's objection, or whatever,
22 could I ask you to produce that CV for me
23 and redact any personal information from it,
24 such as name, address and those kinds of
25 things?

1 A. Yes, absolutely, I can forward it to Marsha.

2 Q. Now, this morning we heard variously that
3 the name of your company is
4 Digi International?

5 A. Yes, that's correct.

6 Q. And we also heard some of the short form of
7 the name Digi?

8 A. Yes, that's correct.

9 Q. And so how does the world, to your
10 knowledge, know you as in a corporate sense?

11 Are you known as
12 Digi International?

13 A. I would say, to my knowledge, it's equally
14 known as Digi International or Digi.

15 Q. And we saw the trademarks and you identified
16 a few trademarks for us this morning, and
17 what have you.

18 What business do those trademarks
19 represent, as best as you know?

20 What is the business of
21 Digi International?

22 A. It's providing connectivity devices to a
23 number of different market spaces.

24 Q. And if we were to ascribe a meaning or
25 goodwill to the Digi name or

1 Digi International name, that would be it,
2 generally speaking?

3 A. I am not understanding your question. I am
4 sorry.

5 Q. I guess I am asking what your core business
6 is.

7 And I guess you have answered.

8 A. Yes.

9 Q. And that's what Digi represents; it
10 represents the core business that you do?

11 A. Yes, that's correct.

12 Q. Are you a leading provider of these kinds of
13 products?

14 A. Yes, we are.

15 Q. And could you name five competitors, or
16 three competitors, or can you give me some
17 idea of who your main competition is.

18 A. Yes. It's also depending on which products
19 as to which of our competitors.

20 Q. Understood. I don't know how we could
21 address it. Maybe we could start generally,
22 then.

23 A. Okay. Lantronix, Moxa, M-O-X A, Comptrol,
24 Avocent.

25 Q. And I know you qualified that depending on

1 the area of activity, you may or may not
2 have a competitor.

3 What did you mean by that? Did you
4 have anything specific in mind?

5 A. No, just depending on the product line, is
6 depending on the competitor in that product
7 line. Some cross different product lines,
8 some are very focused on one or two.

9 Q. When did you first hear about my client?

10 A. I first heard approximately a year ago, I
11 think.

12 Q. And is my client your competitor?

13 A. I believe so.

14 Q. And was this a corporate decision, or are
15 you aware of when our client became your
16 competitor?

17 A. No. I first heard about your client a year
18 ago. I went onto the web site and I looked
19 into it.

20 Q. And you view our client as a competitor?

21 A. Yes, I do.

22 Q. And is that because you make products that
23 have applications in the point-of-sale
24 field?

25 A. Yes, that's correct.

1 Q. Now, in answer to counsel's questions with
2 respect to your company's activities and the
3 point-of-sale field in association with the
4 trademarks, you identified two areas that
5 you focus on: You identified the fast food
6 area?

7 A. Yes.

8 Q. And can you describe that, please, what your
9 emphasis is in that area.

10 A. We supply connectivity for point-of-sale
11 systems that can be used in fast food
12 restaurants.

13 Q. And what, specifically, do you supply?

14 A. We supply Edgeport products, we supply
15 ConnectPort Display products, Watchport
16 products, and Terminal Server products.

17 Q. And what are those Terminal Server products?

18 A. They are boxes that allow you to connect
19 multiple different types of terminal to an
20 ethernet connection.

21 Q. And you have also identified another focus,
22 systems integrators.

23 A. Yes, that's correct.

24 Q. And can you describe that commercial
25 relationship that you have with systems

1 integrators.

2 First of all, who are they?

3 A. I can give you some examples: People like
4 Siemens Nixdorf, N-I-X-D-O-R-F, NCR, Avery,
5 IBM, Dell.

6 Q. And these are obviously large companies with
7 huge expertises in whatever the subject
8 field might be?

9 A. Yes, that's correct.

10 Q. And is the idea here to fully introduce your
11 products to these people so they can acquire
12 them from you and use them in systems they
13 manufacture for others?

14 A. Yes, that's correct.

15 Q. So in the point-of-sale area, those are
16 the -- that's the focus of your company, the
17 fast food and the systems integrators?

18 A. No. Actually, we sell -- fast food is a
19 specific area that heavily advertise one of
20 the products in.

21 The systems integrators like NCR,
22 they actually manufacture point-of-sale
23 machines that are used in supermarkets,
24 stores, everywhere that you go.

25 Q. And to understand that, that would be

1 equipment that's manufactured and branded
2 by, for example, NCR?

3 A. Yes, that's correct.

4 Q. And your equipment, branded or unbranded,
5 would be somehow inside?

6 A. May not necessarily be inside. It may be
7 outside, depending on the actual system and
8 how they design it.

9 Q. And you may have said, but do you sell sort
10 of branded equipment to system integrators
11 or is it both or --

12 A. Both.

13 Q. So in the example you gave, the systems
14 integrators on which you focus are the ones
15 who configure and deliver turnkey
16 point-of-sale systems for their customers?

17 A. Yes, that's correct.

18 Q. That being your focus, you perfect that
19 focus by, I guess, addressing, as I
20 understood your evidence, three channels of
21 trade: One of them are distributors?

22 A. Uh-huh.

23 Q. And, again, very briefly, how does that
24 work? You indicated that the idea there is
25 for them to buy stock?

1 A. Yes, that's correct.

2 Q. And what does the distributor do? Who does
3 he distribute to?

4 A. He distributes to resellers or systems
5 integrators, and they tend to buy that
6 product directly from them.

7 Q. And I think we talked about systems
8 integrators, right?

9 A. Yes, that's correct.

10 Q. So if we could just -- are systems
11 integrators any different from OEM?

12 A. Yes, they are.

13 Q. So let's talk about resellers.

14 And who are resellers again?

15 A. Resellers are people who are working
16 directly with the end customer to design
17 solutions and applications.

18 Q. So in the case of systems integrators, that
19 would be off-the-shelf equipment proprietary
20 to the system integrator that they would
21 sell to customers?

22 A. Yes, that's correct.

23 Q. And the resellers are more people who have
24 customers or clients, and they sound like
25 they are consultants who solve problems for

1 customers?

2 A. Yes, that's correct.

3 Q. And you would sell to those resellers?

4 A. Some of them, very large ones, yes.

5 Q. Can you give me an example of one such
6 reseller?

7 A. ScanSource.

8 Q. ScanSource.

9 And the OEM category, what is that
10 category, please?

11 A. An OEM is somebody who manufactures
12 equipment, so it could be a -- give you an
13 example.

14 It could be a scanning device, for
15 instance, in point-of-sale.

16 And they would embed one of our
17 devices in that scanning device to provide
18 the ethernet connectivity, so it would
19 generally be an embedded device that would
20 go into an OEM.

21 Q. And those are the channels of trade by which
22 Digi International sells its products to the
23 marketplace?

24 A. Yes, that's correct.

25 Q. So the end customer, in the examples that we

1 have talked about, is a person who may
2 receive equipment, I guess, from a systems
3 integrator, from a reseller, from an OEM?

4 A. Yes, that's correct.

5 Q. I would like to briefly look at the
6 newsletters.

7 Briefly, if you could look at
8 Exhibits 36 and 37.

9 In the context of what we have just
10 been discussing, you and I, who are these
11 newsletters sent to?

12 A. They are sent to a combination of reseller
13 systems integrators but also end user
14 customers.

15 Q. What kind of end user customers would you
16 send them to? Because I don't think they
17 are a category to which you sell.

18 A. No, but we actually market directly to end
19 users.

20 Q. Okay, mark.

21 And so who have you -- I mean, is
22 it just like any name on a list, or is it
23 some --

24 A. No.

25 Q. -- theory that goes behind identifying those

1 people?

2 A. Yes, absolutely.

3 So these are -- the people who
4 receive these are people that have
5 specifically requested, either through our
6 web site or via one of our salespeople, to
7 receive information in the form of this
8 newsletter.

9 And that could be a reseller or an
10 integrator, or it could be an IT manager in
11 a supermarket chain or something like that.

12 Q. And again, speaking generally, this is in
13 furtherance -- I mean, all of these people
14 are in your so-called -- not in a derogatory
15 sense -- vertical markets that you are
16 after?

17 A. Yes, that's correct.

18 Q. And I take it you are precisely after all of
19 these vertical markets that you discussed,
20 identified industrial automation, retail
21 point-of-sale, building automation and
22 security, medical, health care, out-of-band
23 management and possibly office networking?

24 A. Yes, that's correct.

25 Q. So all of your products have an application

1 or some application to all of these vertical
2 markets?

3 A. Yes, that's correct.

4 Q. Looking, very briefly, at your Exhibits 38,
5 39 and 41, the innovative technology in 38
6 that you have identified was your
7 AnywhereUSB product?

8 A. Yes, that's correct.

9 Q. Can you talk about that product in terms of
10 its functionality, in terms of what it does.

11 A. It's a -- it's a wireless product, so it
12 uses Bluetooth and wireless to connect
13 devices, in this case, point-of-sale
14 devices, to an ethernet network.

15 Q. And how is that product branded?

16 I mean, we will see some examples
17 of it, but is it branded with the anywhere
18 trademark?

19 A. Yes, it is.

20 Q. AnywhereUSB?

21 A. Yes, that's correct.

22 Q. And if there has been a change in that --
23 first of all, has there been a change in
24 that?

25 A. No, there hasn't.

1 Q. And, also, the cameras. And I discussed
2 cameras yesterday, and so that's for your
3 Watchport products?

4 A. Yes, that's correct.

5 Q. And looking at 39 and 40, by reading those
6 documents, they make reference to specific
7 products that you sell, such as HubPort or
8 Edgeport?

9 A. Yes.

10 Q. And we looked at, this morning, a list of
11 your trademarks, and what have you, and as I
12 understand matters, or at least the
13 paperwork that I have seen, all of those
14 specific products are specifically branded,
15 such as Edgeport is a trademark that you use
16 for that product, on that product?

17 A. Yes, that's correct.

18 Q. And on all three exhibits, 39, 40 and 41 --
19 and I don't mean to be repetitive, but in
20 the second line it says "Digi markets its
21 products through a global network of
22 distributors and resellers, system
23 integrators and original equipment
24 manufacturers, OEMs."

25 And that's a true statement?

1 A. Yes, that's correct.

2 Q. Just to confirm your presence here in the
3 United States, given your background, you
4 were working for the company out of a German
5 location.

6 When did you physically arrive to
7 take up your duties here in Minneapolis?

8 A. 3rd of February, 2002, Superbowl Sunday.

9 Q. And prior to that you had worked for the
10 company for three years?

11 A. No, prior to that I had worked for the
12 company for just over a year in Germany.

13 Q. So your hands-on knowledge, apart from your
14 belief, goes back to 2001?

15 A. Yeah, 2001.

16 Q. So when would you say you have firsthand
17 knowledge of the matters to which you
18 deposed to today?

19 A. I have actually known of Digi for a long
20 time, so while I was working at Anixter,
21 Digi was a product line that Anixter
22 supported to.

23 I have known Digi for probably
24 about ten years.

25 Q. And that is because of your relationship

1 with that company?

2 A. Yes, that's correct.

3 Q. What did that company do?

4 A. They actually -- they are a global
5 distributor of networking products.

6 Q. So were they Digi International's
7 distributors?

8 A. Yes, they were.

9 Q. And just -- can you spell that name for me
10 because I didn't catch it.

11 A. Anixter, A-N-I-X-T-E-R.

12 Q. And you worked for them for how many years?

13 A. Eight years.

14 Q. And you got to know Digi International
15 precisely through the distributor
16 relationship?

17 A. Yes, I did.

18 Q. And prior to that you worked for another
19 company that had another relationship with
20 Digi International?

21 A. No, I did not.

22 Q. So prior to Anixter you didn't know anything
23 about Digi International?

24 A. That's correct.

25 Q. With reference to Exhibit 46, and typical

1 packaging, I understand your evidence to say
2 that all of your products -- today, let's
3 take for an example -- are sold in packaging
4 that looks like this?

5 A. Yes, except the MaxStream products today.

6 Q. And I notice no other designation on the box
7 for what may be inside it.

8 Is that because you put stickers on
9 it or --

10 A. Actually, the Digi standard packaging is
11 brown with a big Digi logo on --

12 Q. Just like this?

13 A. Yes. That's actually one example specific
14 to that product.

15 But the standard box that's used on
16 all of the products has the big green square
17 logo on it and the web site address,
18 www.digi.com, and then a label on the side
19 specifying which product is inside.

20 Q. So you identified this to be a box for a
21 specific product.

22 And what product would that be?

23 A. That's for the multi-port serial cards, what
24 used to be the Digi Board.

25 Q. And would this box, when the board would be

1 shipped to a customer, would it have any
2 additional labeling or identification on it?

3 A. Yes. It would have a labeling on the
4 outside of the box along one of the edges,
5 with a bar code and a product serial number
6 and product part number on it.

7 Q. So in effect, I think what you are
8 describing is a kind of co-branding. So you
9 have the reference to Digi International, as
10 we see here, and then we have a reference to
11 one of your other trademark products on the
12 label?

13 MR. BOYLE: I am just going to
14 object that it calls for a legal conclusion.

15 Go ahead.

16 THE WITNESS: I am sorry?

17 MR. BOYLE: I am just putting an
18 objection on.

19 You can go ahead and answer.

20 THE WITNESS: The standard box --
21 try and get a little bit more specific for
22 you.

23 The standard box just has the big
24 green logo on it, not the international, and
25 it has www.digi.com and then the product

1 trademark -- and I don't consider that
2 co-branding, that's a trademark.

3 BY MR. ANISSIMOFF:

4 Q. I apologize for the co-branding part. I
5 didn't intend anything by it.

6 I meant that there is an additional
7 designation on the box referring to another
8 trademark, at a minimum?

9 A. Yes, that's correct.

10 Q. And those trademarks, variously, are the
11 ones that you produced today, that list of
12 trademarks --

13 A. That's correct.

14 Q. -- that refer to the products that you
15 manufacture and sell?

16 A. That's correct.

17 Q. Now, with reference to Exhibit 47 and the
18 Installation Guide, who is the guide
19 intended for?

20 I mean, is it fair to suppose that
21 it is directed to a person of ordinary skill
22 and knowledge who works perhaps for Siemens,
23 or who is this directed to?

24 What's the level of skill required
25 to understand this and implement these

1 instructions?

2 A. You would have some level of technical
3 skill.

4 Q. Does the company -- do you have any kind of
5 a baseline or any understanding of what that
6 skill level is?

7 That's not a man on the street or a
8 woman on the street?

9 A. No, it's not, no.

10 Q. And what did you say Exhibit 48 was? A
11 guide?

12 A. Yes. This is a procedural guide for
13 internal people when they are ordering
14 products for OEM partners.

15 Q. It's directed to your people?

16 A. It's actually directed for our internal Digi
17 people or people at distributor level or OEM
18 level. So some of our partners.

19 Q. So those are the intended recipients and
20 users of this document?

21 A. Yes, that's correct.

22 Q. With reference to Exhibit 49, and page 21 --
23 and I was wondering if you can place that
24 before the witness.

25 Thank you.

1 You testified that at page 21 we
2 have an example of a point-of-sale
3 arrangement.

4 A. Yes, that's correct.

5 Q. Now, specifically in looking at that to
6 identify the particular product that's
7 featured in this diagram, am I correct to
8 say that it's your AnywhereUSB product?

9 A. No. There are two others in here, as well.

10 Q. We will get to them.

11 A. Yes, correct.

12 Q. So the AnywhereUSB product that we spoke of
13 and for which there have been product sheets
14 and everything else that we have seen.

15 A. Yes, that's correct.

16 Q. So that's one product that would be used.

17 And AnywhereUSB is a trademark,
18 correct?

19 A. Yes, that's correct.

20 Q. And you identified two others and I was
21 going to get to them because you could see
22 the arrows here on my page.

23 Could you please describe the
24 WaveSpeed/LAN?

25 A. The WaveSpeed/LAN is a wireless product that

1 allows you to connect a wireless network to
2 the ethernet.

3 Q. Again, would you accept that we are
4 connecting a peripheral device, such as a
5 bar code scanner, a cash register, receipt
6 printer, via this WaveSpeed product?

7 A. Yes, that's correct.

8 Q. And then there is one more, the Edgeport?

9 A. That's correct.

10 Q. Can you please describe the functionality of
11 that product.

12 A. The Edgeport product allows you to connect
13 USB connections to ethernet connections.

14 Q. So generally, again, ethernet connections
15 are under one protocol and USB connections
16 are under another protocol, and they
17 translate or --

18 A. Yes, that's correct.

19 Q. With reference to Exhibit 50, if we can go
20 to page 35, please.

21 This is another -- this is a retail
22 point-of-sale configuration that you
23 identified in your evidence.

24 And looking at that, what
25 Digi International or Digi product is being

1 recommended for that application?

2 A. That's the AnywhereUSB product.

3 Q. And that's the one we discussed today?

4 A. Yes, that's correct.

5 Q. And there is no other product there? I just
6 don't want to --

7 A. No, that's correct.

8 Q. And if we can go back to 31, page 31,
9 perhaps we could take it just briefly from
10 the top.

11 What was your testimony with
12 respect to this document, this USB
13 point-of-sale document?

14 First of all, the Inside Out
15 Networks. We talked about that this morning
16 again?

17 A. Yes, that's correct.

18 Q. And that brand continues to be used or it's
19 being phased out as of -- even as we speak?

20 A. Actually, it was phased out as of March,
21 2006.

22 Q. So prior to that date, this is what this
23 document would have looked like?

24 A. Yes, that's correct.

25 Q. And in terms of the specific product

1 referred to, the Digi International product
2 referred to, it's the Edgeport?

3 A. That's correct.

4 Q. And is there any relationship between this
5 Edgeport product and the Inside Out
6 Networks's trademark?

7 Is Edgeport something that came
8 with this company, or was it separately
9 developed by Digi International and then
10 folded in, or --

11 A. I have no knowledge of whether it came with
12 the company, or not.

13 Q. If I look at this document, I notice no
14 reference at all to Digi or
15 Digi International. I see Inside Out
16 Networks and I see Edgeport.

17 Would that be correct?

18 I am sorry, the web site is
19 indicated at the bottom.

20 A. And it specifies "A Digi International
21 company, in both the text and on the Inside
22 Out Networks' logo.

23 Q. You gave testimony with respect to something
24 called a published white paper item.

25 I don't know what that is.

1 A. Digi often writes technical papers on
2 technology that can be published either in
3 trade publications or on our web site.

4 Q. Do you have a current list of those papers
5 that I could access somehow, if I was
6 interested in this?

7 A. Actually, you can go to the Digi web site
8 and go into literature and all the white
9 papers are listed in that.

10 Q. Are they? Okay.

11 With reference to Exhibit 50 -- and
12 I don't know whether you can recall exactly
13 your evidence -- but you identified a range
14 of products on the front page that have
15 application in a point-of-sale system.

16 A. Yes, that's correct.

17 Q. And then you also referred to a longer list
18 or an equal list somewheres inside of
19 products again that have application in a
20 point-of-sale system.

21 A. That's correct.

22 Q. Are those products -- all of those products
23 that you referred to, are they
24 point-of-sale-specific products?

25 A. No, not all of them.

1 Q. Are all of those products intended and are
2 useful and can be used in the vertical
3 markets we discussed?

4 Is that --

5 A. Some of them are specific to other vertical
6 markets. The ones I listed, some are
7 specific to retail and some of them can be
8 used in other vertical markets.

9 Q. Perhaps you can identify what, in your view,
10 are the so-called point-of-sale-specific
11 products.

12 A. That cannot be used in other vertical
13 markets?

14 Q. Thank you. And if we can -- yeah.

15 A. The USB Plus Power series, specific to
16 retail.

17 Q. If I could just stop you there.

18 And what makes it specific, the USB
19 designation or the power designation?

20 A. It's the power designation.

21 It was actually designed in
22 conjunction with a customer for the
23 integrator for use in a retail environment.

24 Q. I have a mechanical engineering background,
25 so you will forgive me.

1 Is this power -- is this designed
2 to eliminate the need to plug in, say, a
3 printer or some peripheral device?

4 A. I don't know.

5 Q. No problem.

6 But it delivers power to the
7 connection so that the -- that's the idea?

8 A. Yes, that's correct.

9 Q. So before you go on, would the power
10 designation make it specific to
11 point-of-sale applications?

12 A. Yes, that's correct.

13 Q. And in each case your answer would be that
14 the power does it?

15 A. To my knowledge, yes.

16 Q. And not to foreclose you. Are there any
17 other products that are specific to
18 point-of-sale applications?

19 A. Not in this catalog, actually. Let me have
20 a quick look. Not in this publication, no.

21 Q. And again, not to foreclose you, are you
22 aware, as you sit there, about other
23 point-of-sale-specific products?

24 A. Yes, I am.

25 Q. Please.

1 A. It's the Digi ConnectPort display.

2 Q. And when was that project launched?

3 A. In -- I can't remember the specific date,
4 but it would have been launched last year.

5 Q. In '05?

6 A. Yes.

7 Q. And the functionality of that product -- I
8 think you may have described it, but I will
9 ask you, what is the functionality of that
10 product?

11 A. We actually advertise it as PC-free
12 retailing, and it takes the need for PC's as
13 part of a point-of-sale.

14 Q. Your colleague may have testified to that
15 product using the descriptive term
16 "zero-client"?

17 A. Absolutely, that's correct.

18 Q. So that's what we are talking about?

19 A. Yes.

20 Q. Do you have any idea as to what the retail
21 price of that product is?

22 A. No, I have no knowledge of that.

23 Q. Are you in a position to guess?

24 A. No, I am not. I am sorry.

25 Q. Those products that you listed with

1 reference to Exhibit 50, to the extent they
2 are not the power products, they are useful
3 and are recommended, again, to a greater or
4 lesser degree, for application in your
5 vertical markets?

6 A. Yes.

7 MR. ANISSIMOFF: If I could ask
8 Exhibit 28 to be produced. I have it
9 somewhere.

10 THE WITNESS: Yes.

11 MR. ANISSIMOFF: Thank you.

12 BY MR. ANISSIMOFF:

13 Q. With reference to Exhibit 28, I believe your
14 testimony was -- first of all, what is this
15 document?

16 A. This is a Device Server Solution Guide.

17 Q. And I believe you said that that's for use
18 by your salespeople?

19 A. By our salespeople and our channel
20 salespeople.

21 Q. Yes. That's the question I was going to
22 ask.

23 Again, these are your salespeople
24 but they sell to -- what does "channel"
25 mean?

1 A. When I say "channel salespeople," I mean the
2 actual salespeople at system integrator
3 level or distributor level also use these as
4 sales tools.

5 Q. They would, for example, leave a copy of
6 that when visiting their customers?

7 A. That's correct.

8 Q. And the vertical markets we spoke of,
9 without beating a dead horse, are the ones
10 that we spoke about yesterday with reference
11 to one of the documents?

12 A. Yes, that's correct.

13 Q. With reference to Exhibit 52, I understand
14 that these are the trade shows that your
15 company and your people will be attending in
16 the upcoming year?

17 A. Actually, that's only a few of them. These
18 are our more recent ones, yes.

19 Q. That's what I was going to ask.

20 How many trade shows do you attend?

21 A. Approximately -- because it fluctuates --

22 Q. Not a problem.

23 A. -- on a quarterly basis.

24 Around about 30 a year.

25 Q. And is there a list of those trade shows

1 that you attend?

2 A. Yes.

3 Q. Is there a list available?

4 A. Absolutely. I can --

5 MR. ANISSIMOFF: If I could have a
6 list, please.

7 BY MR. ANISSIMOFF:

8 Q. And how are these trade shows selected? On
9 what basis?

10 I mean, we can get to these, but is
11 there any overall driving intent or concept
12 in attending these trade shows?

13 A. Absolutely. We look at where our primary
14 business focus is for the year, so that's
15 dependent on product, and, also, vertical
16 market.

17 We then go out and research
18 potential venues for trade shows. We look
19 at historical attendance and whether it was
20 successful for us or not.

21 And then we agree which ones we
22 attend with our sales team and, also, our
23 product marketing team.

24 Q. And at those trade shows, generally, you
25 have a booth, or --

1 A. Yes. We have a booth there, a Digi booth,
2 displaying relevant products.

3 Q. Would these trade shows represent the
4 vertical markets we spoke about?

5 A. Yes, that's correct.

6 Q. And at least -- because the other ones I
7 don't know, but if we can just maybe focus
8 on the ones that you have produced here for
9 us today.

10 The first bundle is the Remote
11 Monitoring Networking.

12 A. Yes.

13 Q. To your knowledge, who goes to this trade
14 show?

15 A. It would be people who are interested in
16 having a backup network to their main
17 network.

18 Q. And how many attendees would go to -- or do
19 we see it here?

20 A. That's actually an exhibiter list you have
21 there, I believe.

22 Q. Oh, yes. So these would be the people that
23 would be interested in that?

24 A. Yes. So these would be the companies who
25 exhibit their products at this trade show.

1 The attendees are the people who --
2 the end users who come to the trade show to
3 look for relevant products.

4 Q. And without foreclosing you in any sense,
5 are all of these people interested -- all of
6 these exhibitors interested in providing a
7 backup network to their network?

8 A. To the best of my knowledge, yes.

9 Q. And this may seem tedious -- it probably
10 is -- one of Digi International's focuses is
11 to offer means to back up networks, offer
12 products that can back up networks?

13 A. That's correct.

14 Q. And looking at -- sorry.

15 A. No problem.

16 Q. If you were looking at anything, I didn't
17 mean to interrupt your search.

18 A. No, no, no, I was just --

19 Q. The next one is -- maybe I can show it to
20 you.

21 Which one is that?

22 A. GTEC.

23 Q. GTEC.

24 What is the focus here, at GTEC?

25 A. I actually don't know.

1 Q. Not a problem.

2 Let's go to the next one. I think
3 it's the water quality show.

4 And do you know what the focus is
5 with respect to this trade show?

6 A. Yes, it's wastewater management, so it's
7 utility companies looking for ways to better
8 connect their networks and their
9 substations.

10 Q. Again, using the products that we have
11 discussed today?

12 A. Yes, that's correct.

13 Q. And I won't risk redefining it.

14 So this is wastewater, but this is
15 an example of your vertical market for
16 automation and --

17 A. Actually, utilities. If you look on the
18 home page of the Digi web site, utilities is
19 split out as a separate section.

20 Q. Okay. Next we have the FSTEC.

21 A. Yes, that's correct.

22 Q. And who are the exhibitors here?

23 A. They are exhibitors who have electronic
24 products that are useful in a fast food
25 environment.

1 Q. Have you been to this show before?

2 A. Yes. We exhibited there last year.

3 Q. And that would be in '05. Did you exhibit
4 in '04?

5 A. No, we didn't.

6 Q. And the last one was Rockwell Automation.

7 A. Yes.

8 Q. And the focus here is --

9 A. Industrial automation.

10 Q. Okay. Are you familiar with a company
11 called Circuit City, a retailer?

12 A. Yes, I am.

13 Q. Do you sell any products to Circuit City?

14 A. I don't know.

15 Q. Would you know, or somebody else in your
16 company would know that, or --

17 A. Somebody else would know that.

18 Q. Are you, in your capacity, and given your
19 function, executive function with the
20 company, are you aware of any literature or
21 documentation or sort of anything like that
22 that would rate your company against other
23 companies or against your competitors or is
24 there any such thing that you are aware of?

25 A. Not to my knowledge, no.

1 Q. So there is no industry watchdog that sort
2 of lists people or --

3 A. No, not to my--

4 Q. -- or compares people or --

5 A. No, not to my knowledge.

6 Q. There is no such thing, eh?

7 A. No.

8 Q. So you don't have anything to do with sales
9 or -- better let you answer.

10 A. You know, I work closely with the sales
11 department defining our marketing programs,
12 but I don't sell products myself.

13 Q. Are you aware, in working with those
14 marketing people, whether you have lost any
15 sales to my client?

16 A. I have no knowledge of that.

17 Q. Was that ever discussed?

18 A. Not to my knowledge.

19 Q. And to confirm, the first time you heard
20 about my client is about a year ago?

21 A. Yes.

22 Q. And what were the circumstances?

23 A. I believe somebody sent me an e-mail
24 regarding the use of the Digi name in
25 Europe, actually.

1 Q. Do you recall who that might have been?

2 I am not asking for names, because
3 I am not really interested.

4 But was that an internal e-mail or
5 an external e-mail or --

6 A. It would be an internal e-mail.

7 Q. And in terms of formally hearing about it,
8 sort of in an executive capacity, if you are
9 able to answer that question, when did you
10 formally hear about that from sort of either
11 your colleagues or person to whom you report
12 in the corporation?

13 Did our client's name come to you
14 subsequently in any other way or --

15 A. Yes, it would have come from Marsha and
16 Steve Maurer. Steve is our internal legal
17 person.

18 Q. And was that shortly after that year that
19 you mentioned?

20 A. Yes, as far as I recall.

21 MR. ANISSIMOFF: The last thing I
22 would like to do is to remind the record of
23 my objection with respect to the production
24 of the various documents at the outset of
25 the examination, and otherwise thank the

1 witness, and that's all I have.

2 MR. BOYLE: Should we confer just
3 for a minute?

4 (A recess was taken.)

5 MR. BOYLE: I just have a handful
6 of questions.

7

8 FURTHER EXAMINATION

9 BY MR. BOYLE:

10 Q. Just to clarify on who Digi sells to, does
11 Digi also sell, on some occasions, to end
12 users?

13 A. Yes, it does.

14 MR. ANISSIMOFF: That seems to be
15 contrary to the evidence, but --

16 THE WITNESS: Only very select end
17 users, very large, large customers who
18 insist on a direct relationship.

19 MR. ANISSIMOFF: If we are going to
20 ask that question, I think we need to have
21 the witness elaborate fully and completely
22 because that question is different from the
23 evidence.

24 But since we are into it, I think
25 we need to hear the whole story, with

1 respect.

2 MR. BOYLE: We had similar
3 testimony from Mr. Young yesterday, when he
4 testified that on some occasions they sold
5 to end users.

6 MR. ANISSIMOFF: I don't think this
7 has anything to do with Mr. Young, this has
8 to do with this witness.

9 Mr. Young didn't say who the end
10 users were, and I didn't know who they were.

11 But the answer here is that they do
12 sell to end users. And who are those end
13 users? Very large? If I could hear who
14 they are, please.

15 MS. STOLT: That would be
16 confidential information, wouldn't it?.

17 MR. BOYLE: The names or do you
18 want just the categories or types?

19 MR. ANISSIMOFF: Well, I need the
20 question answered. It's your question.

21 MR. BOYLE: My question was, do you
22 sell to end users? She told me yes, which
23 is consistent with what Mr. Young said
24 yesterday.

25 MR. ANISSIMOFF: Well, who is an

1 end user?

2 MR. BOYLE: I believe Mr. Young
3 said yesterday that there is some large
4 retail buyers and other people that they
5 sell directly to, and then we got into that
6 discussion that you recall that we didn't
7 want to disclose names that were
8 confidential.

9 MR. ANISSIMOFF: First of all,
10 then, I need to know the general description
11 of the so-called end user.

12 Who is this end user?

13 THE WITNESS: An end user would be
14 the ultimate end customer, so it could be
15 like a large retail outlet or a multi-site
16 large corporation.

17 MR. ANISSIMOFF: I need to know
18 more about these end users.

19 Are you refusing to give any names
20 or anything like that?

21 MR. BOYLE: Without a
22 confidentiality order, we can't, or some way
23 to protect it.

24 MR. ANISSIMOFF: I will certainly
25 enter into a confidentiality order, and I

1 think that I need to know who these
2 so-called end users are, because I thought
3 the evidence was very clear that the
4 channels of trade are quite different.

5 MS. STOLT: I think the evidence
6 yesterday from Joel was very consistent with
7 this, that there were cases where end users
8 had their own network administrators with
9 the capability to integrate our client's
10 products into the systems, and those were
11 customers.

12 MR. ANISSIMOFF: Well, it's not
13 what we heard today, so -- and I think both
14 in chief and on examination this witness
15 identified the channels of trade quite
16 precisely.

17 And if, somehow, it wasn't clear
18 then, then I need to ask who these end users
19 are in some detail.

20 MS. STOLT: Are you willing to
21 supply a comparable list of customers from
22 your client?

23 MR. ANISSIMOFF: I think we may
24 come to that, but I think I need to get the
25 question answered.

1 I mean, this end user business.

2 MR. BOYLE: Well, I don't know
3 where we go without a confidential provision
4 and some understanding between the two of
5 you.

6 MR. ANISSIMOFF: Well, I don't
7 think we are sort of bargaining questions
8 and answers. I mean, this is your question
9 about end users.

10 MR. BOYLE: I asked a question, she
11 answered it. You are the one following up.
12 I don't need to follow up any further.

13 MS. STOLT: The rules of discovery
14 provide that classes of customers are
15 discoverable information, but that specific
16 customer names are not, without a
17 Confidentiality Agreement or an order from
18 the governing body, which in this case would
19 be the TTAB.

20 MR. ANISSIMOFF: Well, I understand
21 there is a standard confidentiality order in
22 which we could enter into, so I am prepared
23 to enter into that.

24 MR. ANISSIMOFF: Here is my
25 objection, however one puts this: The

1 channels of trade for Digi International
2 were described to be distributors,
3 resellers, OEM, and the category of systems
4 integrators.

5 That's who we identified -- what we
6 identified as the channels of trade.

7 We didn't identify any end users.
8 This is something new that you are
9 introducing for the first time now.

10 And I think, just for the record, I
11 will object to it, and we can move on.

12 MR. BOYLE: Well, I would disagree,
13 and to the extent that we got testimony from
14 Mr. Young yesterday about that very topic
15 that he said there are occasions where they
16 sell directly to end users where you have
17 got an IT person or someone at a
18 sophisticated level in a business that buys
19 directly from Digi.

20 And Ms. McBride today identified
21 the three primary areas that they sell to,
22 which are distributors, OEMs and resellers,
23 and it became aware to me, even though I
24 assume she knew that there were end users,
25 as you questioned on cross-examination, and

1 tried to limit their market solely to those
2 three items, that we needed to have her
3 clarify, as well, that there are occasions
4 where they sell to end users. And we have
5 done so.

6 MR. ANISSIMOFF: Well, I need to
7 specifically disagree to that because it's
8 nothing arising out of my cross-examination
9 and it's nothing arising out of your
10 examination in chief.

11 This is a brand new question that
12 you are asking, leading the witness,
13 something about end users.

14 So I think it's just improper and I
15 object to it on that basis.

16 MR. BOYLE: Well, I heartily
17 disagree.

18 MR. ANISSIMOFF: Of course you do.

19 MR. BOYLE: I am seeking simply
20 clarification for the cross-examination
21 questions you asked where you tried to limit
22 her solely to those three markets.

23 And there are exceptions or times
24 where there are sales -- it's a fact, there
25 are times when there are sales to end users.

1 It's a fact.

2 MR. ANISSIMOFF: Well, I appreciate
3 for your testimony on the record, but this
4 doesn't arise out of anything you asked
5 about and it doesn't arise out of anything
6 that I asked about.

7 So I think -- I don't know where we
8 go on that, but without a confidentiality
9 order, I am not sure we can go any further.

10 MR. BOYLE: I don't think we can.
11 I mean, I have to leave it up to you, as
12 counsel involved on the --

13 MS. STOLT: I can't enter into a
14 confidentiality order with you right now on
15 your own volition without consulting with my
16 client, and even if I could, I couldn't
17 produce the names of customers for you
18 today.

19 MR. ANISSIMOFF: Okay. Well, I
20 guess we -- just to be clear, my objection
21 is on the record.

22 Over to you.

23 BY MR. BOYLE:

24 Q. Counsel asked you about, in particular, the
25 Edgeport and Anywhere product and the way

1 that those product names are used with
2 respect to those particular products. And I
3 draw your attention to Exhibit 27, page 19.

4 Do you recognize that as being
5 information on the AnywhereUSB product?

6 A. Yes, I do.

7 Q. And there is a picture displayed in the
8 upper left-hand portion of that page; is
9 that correct?

10 A. Yes, that's correct.

11 Q. And does that show the typical way that the
12 brand names are displayed on that product?

13 A. Yes, that's correct.

14 Q. So, for instance, there is an AnywhereUSB
15 trade name mark to the right-hand side of
16 the front of the product; is that right?

17 A. Yes, that's correct.

18 Q. And then the Digi logo is to the left-hand
19 side?

20 A. Yes, that's correct.

21 Q. It's the Digi name, D-I-G-I, in a box?

22 A. Yes, that's correct.

23 Q. And is this a stand-alone product? In other
24 words, is it incorporated in another
25 product, or does it sit out separately by

1 itself?

2 A. Sits out separately by itself.

3 Q. And if you will turn to page --

4 MR. ANISSIMOFF: Before you leave,
5 and when did you start marking it as such?

6 THE WITNESS: March of this year.

7 MS. STOLT: Is that from our
8 current catalog?

9 THE WITNESS: This is from our
10 current web site. It's a copy of the
11 data sheet from our web site.

12 BY MR. BOYLE:

13 Q. And showing you page 31, which is the
14 Edgeport document that was discussed, and
15 there is a picture of that product on the
16 upper left-hand side; is that correct?

17 A. Yes, that's correct.

18 Q. And is that a stand-alone product?

19 A. Yes, that's correct.

20 Q. And that shows the trade name of Edgeport on
21 the right-hand side; is that correct?

22 A. Yes, that's correct.

23 Q. And then the Digi logo in the box on the
24 left-hand side?

25 A. That's correct.

1 Q. Is that the way the products are typically
2 marked today?

3 A. Yes, that's correct.

4 MR. ANISSIMOFF: Since March,
5 right?

6 THE WITNESS: Since March, yes.

7 Add a clarification. So the
8 Edgeport name has always been there. It's
9 the Digi logo that has been on there since
10 March. Previously it was the Inside Out
11 Networks logo with the Digi International
12 Company.

13 BY MR. BOYLE:

14 Q. So, for instance, on the Edgeport product,
15 prior to March of this year it had the
16 inside out logo to the left-hand side with a
17 "Digi International Company" underneath it?

18 A. That's correct.

19 MR. ANISSIMOFF: I don't think
20 that's right. In the literature it did, but
21 on the product, it didn't?

22 THE WITNESS: No, I believe it did,
23 to my knowledge.

24 MR. ANISSIMOFF: On the product?
25 Okay.

1 THE WITNESS: Yes. To my
2 knowledge.

3 MR. ANISSIMOFF: I didn't see an
4 example of that.

5 MS. STOLT: Could we confer for
6 just a moment?

7 MR. BOYLE: Yeah.

8 (A recess was taken.)

9 MR. ANISSIMOFF: I think so I might
10 be able to clarify what the witness just
11 said by showing her the Inside Out logo,
12 which also, on the bottom, says "A
13 Digi International company" and ask her if
14 that's what she meant.

15 THE WITNESS: Yes. Thank you.

16 MR. ANISSIMOFF: That's from
17 Exhibit 34.

18 BY MR. BOYLE:

19 Q. And prior to March of this year, when the
20 name -- the branding style was changed, as
21 you described, and products such as the
22 Edgeport or AnywhereUSA product were
23 displayed --

24 A. USB.

25 Q. USB, AnywhereUSB product were displayed in

1 the literature on the web site, did that
2 literature also contain a Digi logo?

3 A. Yes, it did.

4 Q. Now, you testified about retail chains using
5 a point-of-sale technology.

6 Do retail chains, such as
7 supermarkets, also have a need for other
8 types of Digi technology?

9 A. Yes, they do.

10 Q. So for instance, protecting store data;
11 would they also have a need for that, your
12 protection systems?

13 MR. ANISSIMOFF: I would like to
14 put my objection on the record. That
15 doesn't arise out of anything I asked or
16 anything in chief.

17 THE WITNESS: I think I need
18 clarification of what you are asking me.

19 BY MR. BOYLE:

20 Q. For instance, what made me think about it is
21 counsel was asking you about a particular
22 product line, so it does relate, and I can't
23 recall what it was, but it had to do with
24 helping protect their stored information.

25 Do you recall that testimony?

1 THE WITNESS: NO, I don't.

2 MS. STOLT: I think it was the
3 backup, the conference that related to
4 backup systems.

5 MR. BOYLE: Oh, the backup. That
6 was my interpretation. I am sorry.

7 BY MR. BOYLE:

8 Q. Counsel asked you on his cross-examination
9 about backup systems.

10 Do you recall that?

11 A. The actual remote site backup.

12 Q. My question is, would a retail chain have a
13 need for a product like that, as well as for
14 a point-of-sale sale?

15 A. Yes, if they have multiple sites with one
16 central site where they need to back up
17 their data and need remote connections for
18 it.

19 MS. STOLT: I think that's all we
20 have.

21 MR. BOYLE: That's it.

22 MR. ANISSIMOFF: No thank you.

23 (Deposition concluded.)
24
25

1 STATE OF MINNESOTA)
2) ss
3 COUNTY OF HENNEPIN)

4 Be it known that I took the
5 foregoing deposition;

6 That I was then and there a Notary
7 Public in and for the County of Hennepin,
8 State of Minnesota, and that by virtue
9 thereof, I was duly authorized to administer
10 an oath;

11 That the witness before testifying
12 was by me first duly sworn to testify the
13 whole truth and nothing but the truth
14 relative to said cause;


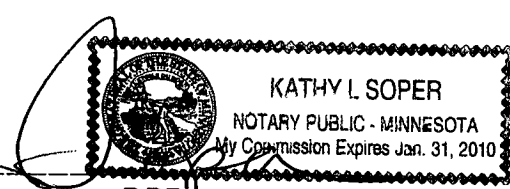
15 That the testimony of said witness
16 was recorded in Stenotype by myself and
17 transcribed into typewriting under my
18 direction, and that the deposition is a true
19 record of the testimony given by the witness
20 to the best of my ability;

21 That I am not related to any of the
22 parties hereto nor interested in the outcome
23 of the action;

24 That the reading and signing of the
25 deposition by the witness was executed as
evidenced by the preceding page;

That Notice of Filing was waived.

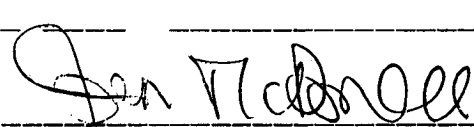
WITNESS MY HAND AND SEAL THIS 19th
day of October, 2006.

22 
23 
24 Kathy L. Soper, RPR
25 Court Reporter

CASE: Digi International vs.
 DigiPos Systems
 WITNESS: JAN McBRIDE
 DATE: October 17, 2006

I, JAN McBRIDE, do hereby certify that
 I have read the foregoing transcript of my
 Deposition, and believe the same to be true
 and correct, (or, except as follows, noting
 the page and the line number of the change
 or addition desired and the reason why);

PAGE/LINE	CORRECTION	REASON
5 15	insert "Marketing" after worldwide	correction
7 21	Cisco	spelling
8 10	Cisco	spelling
26 11	change International to Industrial	correction
67 23	change Comptrol to Control	spelling


 JAN McBRIDE

Dated 13 Nov 06.

Within 30 days, please send all other
 parties a copy of this correction sheet, and
 return the original to:

Mr. John Boyle
 Moss & Barnett
 90 S. 7th Street, Suite 4800
 Minneapolis, MN 55402

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3

4 -----
5 Digi International Inc.,

6 Opposer,

7 Opposition Number

8 vs.

91163719

9 Serial No. 76/561,585

10 DigiPos Systems Inc.

11 Applicant.
12 -----

ORIGINAL

13
14 DEPOSITION OF

15 JOEL YOUNG

16 October 16, 2006

17 9:00 a.m.
18
19
20
21
22
23

24 REPORTED BY: Kathy L. Soper, CSR, RPR

25 California CSR No. 8519

1 The Deposition of JOEL YOUNG, taken
2 pursuant to Notice of Taking Deposition,
3 taken before Kathy L. Soper, RPR, a Notary
4 Public in and for the County of Hennepin,
5 State of Minnesota, taken on October 16,
6 2006, at Moss & Barnett, located at
7 90 S. 7th Street, Suite 4700, Minneapolis,
8 Minnesota, commencing at approximately
9 9:00 a.m.

10
11 APPEARANCES:

12
13 JOHN P. BOYLE and MARSHA STOLT,
14 Attorneys at Law, of the Law Firm
15 MOSS & BARNETT, P.A., 90 S. 7th Street,
16 Suite 4700, Minneapolis, Minnesota 55402,
17 appeared for and on behalf of the Opposer.

18
19 SERGE ANISSIMOFF, Attorney at Law, of
20 the Law Firm ANISSIMOFF & ASSOCIATES,
21 Richmond North Office Central, Suite 201,
22 235 North Centre Road, London, Ontario
23 N5X 4E7, appeared for and on behalf of the
24 Applicant.
25

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1 JOEL YOUNG,
2 called as a witness, was duly sworn and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. BOYLE:

7 Q. Mr. Young, as you know, my name is
8 John Boyle, and I represent Digi, and you
9 are here today for your deposition.

10 Do you understand that?

11 A. Yes.

12 Q. And your deposition has been noticed and you
13 are here as it's duly noted; is that right?

14 A. Yes.

15 Q. Mr. Young, can you just briefly tell us
16 your -- let's start with this: Why don't
17 you tell us your association with Digi and
18 how long you have been with Digi.

19 A. I am the senior vice president of research
20 and development and the chief technical
21 officer for Digi International.

22 I have been working for Digi since
23 July of 2000, so six and a half years,
24 almost.

25 Q. And can you tell us what your

1 responsibilities are as senior vice
2 president of research and development.

3 A. I am responsible for all engineering,
4 product development type activity, so
5 anything that gets developed with
6 technology, I am responsible for overseeing
7 and managing.

8 Q. Can you tell us what your responsibilities
9 are as chief technical officer at Digi.

10 A. I am responsible for establishing a
11 technology direction, if we are supposed
12 to -- if we should work on a specific
13 interface, whether it's wireless technology
14 or type of networking.

15 Q. And as a result of the positions you have
16 with Digi, are you familiar with their
17 product lines?

18 A. Yes.

19 Q. And are you familiar with the technology of
20 those product lines?

21 A. Yes.

22 Q. Can you just briefly tell us, kind of going
23 back from when you came to Digi, what your
24 work experience was prior to that.

25 A. Before Digi, I came from Digi -- to Digi

1 from a company called Transcript
2 International where we made -- I was in
3 charge of engineering. We made encryption
4 modules. I was there for four and a half
5 years.

6 Prior to Transcript International, I
7 worked for AT&T and AT&T Bell Laboratories,
8 where I held a number of engineering and
9 management positions associated with
10 deploying new technologies in the AT&T long
11 distance network.

12 And prior to that I was in college,
13 where I have a graduate degree from the
14 University of Southern California in
15 computer science and a Bachelor's degree
16 from the University of Southern California
17 in electrical engineering.

18 Q. And USC, you are referring to the University
19 of Southern California?

20 A. Yes.

21 Q. So your Bachelor's degree is in electrical
22 engineering; is that right?

23 A. Yes.

24 Q. What level of graduate degree do you have in
25 computer science from USC?

1 A. It is a Master of Science in computer
2 science.

3 Q. Based on your work at Digi, are you familiar
4 with the product lines that Digi has sold
5 since its inception?

6 A. Yes.

7 Q. Can you just describe for us, in general
8 terms, the products that Digi has sold under
9 its mark since 1989.

10 A. Digi has been involved in connectivity
11 products, so tying devices, peripheral
12 devices, back into computers.

13 Those devices, in the early days of
14 Digi -- those products, in the early days of
15 Digi, were multi-port adapter cards, so you
16 would plug a card into a computer, or a
17 server, in order to give it a lot of
18 additional serial ports.

19 And then different devices would
20 connect to those serial ports, whether they
21 would be scanners or cash registers or
22 printers, any number of different devices.

23 And so Digi, over its history, has
24 evolved -- we are still in the connectivity
25 business, our goal still is to connect

1 devices back into computer systems, but we
2 have evolved with technology.

3 So we still sell these multi-port
4 serial adapter cards, but we also sell a
5 variety of products that connect via
6 ethernet, connect via wireless networks,
7 connect via cellular networks, and we have
8 expanded our types of interfaces to include
9 the USB, video interfaces, et cetera.

10 Q. Okay. You jumped ahead to what I was going
11 to ask for my next question, which is how
12 the product line has evolved, and it's moved
13 in that direction over the course of the
14 years since its inception as a company?

15 A. That's correct, yes.

16 Q. Can you tell us what the term or acronym POS
17 stands for.

18 A. POS, usually thought of as point-of-sale, so
19 something related to retail type of
20 deployment.

21 Q. As we talk here today, we may interchange
22 the term POS and point-of-sale, and it means
23 the same thing, correct?

24 A. That's correct.

25 Q. Can you define for us or describe for us

1 what POS systems are, in general.

2 A. POS systems tend to be systems that are
3 deployed in some sort of retail
4 establishment. That establishment would be
5 responsible for selling products.

6 So point-of-sale systems may be
7 related to the direct taking of a person's
8 money or they may be peripheral to it,
9 helping transactions be done, like looking
10 up part numbers or catalogs or providing
11 information about products so that someone
12 may buy it.

13 MR. ANISSIMOFF: Can we go off the
14 record for a second?

15 (A discussion was held off the
16 record.)

17 BY MR. BOYLE:

18 Q. Mr. Young, can you tell us what your
19 background is in POS systems.

20 A. Yes. My tenure here with Digi, in order to
21 develop products, we have to visit a lot of
22 different types of customer settings and
23 customer environments, and so as part of
24 that, you get to see how systems are
25 deployed in various retail type

1 establishments.

2 And so that's my experience.

3 Q. And as part of your responsibilities as a
4 vice president for research and development
5 and a chief technical officer, are you
6 familiar with the point-of-sale or POS
7 technology used by Digi?

8 A. Yes.

9 Q. And sold by Digi?

10 A. Yes.

11 Q. And you understand how the POS process works
12 or operates at Digi?

13 A. I do.

14 Q. As part of your job responsibilities at
15 Digi, are you familiar with data sheets that
16 Digi publishes with respect to its products?

17 A. Yes, I am.

18 Q. And are you familiar with data sheets that
19 Digi publishes with respect to its
20 POS-related products?

21 A. Yes, I am.

22 Q. And are you familiar, as part of your
23 responsibilities, with how those systems
24 work and how that technology works?

25 A. Yes, I am.

(Exhibit 1 marked for
identification.)

BY MR. BOYLE:

Q. Mr. Young, showing you Deposition Exhibit 1,
do you recognize this document?

A. Yes.

Q. And can you tell me what this is.

A. It's a page from the Digi web site. It goes
back to 2001, and it has an outline here of
different product areas, as highlighted.

Q. With respect to Digi's data sheets, is it
Digi's practice to indicate when the
applicable copyright date is?

A. Yes, it is.

Q. And where would one find that on Exhibit 1?

A. Right at the end here on page 2. It
says "Copyright 1996-2001."

Q. And can you just tell us quickly what
Exhibit 1 relates to in terms of the type of
product?

A. Well, it's a cover page from our web site,
and so it has -- identifies industrial
automation, point-of-sale kiosk, as two
specific areas of business.

Q. And your web site is something that's

1 available for the public to see?

2 A. Yes, it is.

3 Q. And so Exhibit 1 would be displayed on your
4 web site for public consumption?

5 A. Yes.

6 (Exhibit 2 marked for
7 identification.)

8 BY MR. BOYLE:

9 Q. Showing you what's been marked as Exhibit 2,
10 do you recognize this document?

11 A. Yes, I do.

12 Q. And can you tell us what that is.

13 A. It is a spec sheet for the Rapidport
14 product.

15 Q. And can you just briefly tell us what the
16 Rapidport product is.

17 A. Rapidport has US -- is USB connectivity to
18 modems, so effectively, it has four analog
19 modems and allows you to connect those
20 modems to a computer via USB port.

21 Q. And does the Rapidport, which is in
22 Exhibit 2, have an operational use in the
23 point-of-sale?

24 A. Yes.

25 Q. Can you tell us how it has a relationship to

1 point-of-sale technology.

2 A. Well, the Rapidport, like all of our USB
3 connectivity products, are meant to tie
4 peripherals back into host computer systems,
5 peripheral connectivity into a host computer
6 system.

7 And that could be via modem or it
8 could be via, you know, serial ports.

9 Q. And does this Exhibit 2 also reflect the
10 applicable copyright dates?

11 A. Yes, it does.

12 Q. And what are those?

13 A. Right down at the bottom here, 1998 to 2001.

14 Q. And I would note, if you go back to the
15 first page of Exhibit 2, there is some
16 triangular bullet points at the bottom
17 right, and it says "Reliable performance for
18 mission-critical applications like
19 point-of-sale, kiosk connectivity, and
20 remote access."

21 Do you see that?

22 A. Yes, I do.

23 Q. And by that statement, is Digi marketing
24 this product for use in point-of-sale?

25 A. Yes, they are.

1 Q. In your experience, who would be the
2 potential purchaser of this product, the
3 Rapidport?

4 A. Most likely, a systems integrator, someone
5 that was going to put together pieces of a
6 system that would be deployed into a
7 business setting, could be a store, could be
8 some other location, but usually a systems
9 integrator.

10 It could also be an end user, if
11 they have systems integration type
12 capabilities, the ability of pulling pieces
13 together into a system.

14 Q. And would the same apply to who would be the
15 ultimate market for this product, or would
16 that be something different?

17 A. Yeah, the ultimate market would be where the
18 system is going to be deployed.
19 Point-of-sale.

20 (Exhibit 3 marked for
21 identification.)

22 BY MR. BOYLE:

23 Q. If I could just have you go back to
24 Exhibit 1, just for a second.

25 And this, you indicated, was from

1 Digi's web page.

2 I would note on the first page,
3 where there is specific reference to "Point
4 of sale/Kiosk," do you see that?

5 A. Yes, I do.

6 Q. And with respect to the product here, which
7 is the Digi AccelePort family, is that
8 related to what I am showing you here, which
9 is Exhibit 3?

10 A. Where is Exhibit 3?

11 Q. Oh, sorry.

12 A. So, yes it is.

13 Q. Okay. And Exhibit 3, likewise, would be an
14 advertisement or a data publication on
15 Digi's web site?

16 A. Yes, yes. All our product data sheets are
17 on the web site.

18 Q. And if you note, the upper right part of the
19 first page of Exhibit 3, there is a
20 reference there that this also applies to
21 POS devices?

22 A. Yes, I see that.

23 Q. And does the AccelePort product have a use
24 in point-of-sale related technology?

25 A. Yes, it does.

1 Q. Can you tell us how.

2 A. Well, as I mentioned earlier, there is a
3 need, particularly in point-of-sale
4 applications, for connecting lots of
5 devices.

6 And so when you are using a
7 computer and you need to tie devices, such
8 as point-of-sale devices, back to a computer
9 system, you would use a card like this, a
10 multi-port serial adapter card, because you
11 can add lots -- a large number of ports onto
12 a computer system.

13 Q. And does Exhibit 3 also make reference to
14 the applicable copyright dates?

15 A. Yes, it does.

16 Q. What is that date?

17 A. 1999.

18 Q. For the AccelePort product, which is in
19 Exhibit 3 -- displayed in Exhibit 3, who
20 would be the purchaser of this product?

21 A. Again, most likely a systems integrator,
22 someone that's putting together a system.

23 Particularly when you are adding
24 cards inside a computer, end users tend not
25 to buy directly, so most likely a systems

1 integrator.

2 Q. And who or what would be the ultimate market
3 for this product, the AccelePort?

4 A. Yeah, so ultimate market would be an end
5 user bundled into a computer system for a
6 point-of-sale type application or others.

7 (Exhibit 4 marked for
8 identification.)

9 BY MR. BOYLE:

10 Q. Showing you what's been marked as Exhibit 4,
11 do you recognize this document?

12 A. Yes. It is a product data sheet for the
13 ClassicBoard.

14 Q. And this product, likewise, was displayed on
15 the web page for Digi?

16 A. Yes.

17 Q. And does this product have a POS
18 application?

19 A. Yes, it does.

20 Q. And does Exhibit 4, the data sheet for the
21 product, indicate that it has a POS
22 application?

23 A. Yes, it does, right up in the upper
24 right-hand corner.

25 Q. And does this data sheet also display the

1 applicable copyright date?

2 A. Yes, it does.

3 Q. What is that date?

4 A. 1999 to 2001.

5 MR. ANISSIMOFF: Could that be
6 explained, please, because it's a range of
7 dates.

8 THE WITNESS: Well, copyrights,
9 from my understanding, the first date
10 represents the first usage, and then the
11 latter year represents the current year or
12 the current publishing date, usually.

13 MR. ANISSIMOFF: Thank you.

14 BY MR. BOYLE:

15 Q. So it's from the first day that it was
16 copyrighted up until the current date that
17 this application is being presented?

18 A. That is correct.

19 Q. Who would be the purchaser of the
20 ClassicBoard product from Digi?

21 A. Just like the AccelePort Xe, it would be
22 primarily a systems integrator or
23 value-added reseller, again, to deploy into
24 an end user type application.

25 Q. And who would be the ultimate market for

1 this product?

2 A. So the market would be a point-of-sale or
3 others.

4 Q. And what is the function of the ClassicBoard
5 technology and how does it relate to POS?

6 A. The ClassicBoard, just like the AccelePort,
7 adds multiple serial ports, or additional
8 serial ports, into a host computer system.

9 It has a PCI type interface,
10 different type of interface, bus interface.

11 Otherwise, it's providing serial
12 ports.

13 Q. So if I follow you right, you can use it to
14 interconnect a system and then relate that
15 to a point-of-sale application?

16 A. Yes.

17 (Exhibit 5 marked for
18 identification.)

19 BY MR. BOYLE:

20 Q. Showing you what's been marked as Exhibit 5,
21 do you recognize this document?

22 A. Yes, I do.

23 Q. Can you tell us what this is.

24 A. It is a product data sheet for the EtherLite
25 product line.

1 Q. And this, also, is a Digi product that's
2 advertised on its web site?

3 A. Yes, it is.

4 Q. And does this product have a POS
5 application?

6 A. Yes, it does.

7 Q. Can you describe what that application is.

8 A. The EtherLite products are used to provide
9 multiple serial ports or serial port
10 expansion back to a host computer system.

11 Unlike the ClassicBoard and
12 AccelePort, where they actually plug
13 directly inside a computer system, the
14 EtherLite provides ports, port expansion,
15 across an ethernet network.

16 Q. And does Exhibit 5 make reference to the
17 fact that it has a point-of-sale retail
18 process application?

19 A. Yes, it does.

20 Q. And what are the applicable copyright dates
21 for Exhibit 5?

22 A. 1999 into 2001.

23 Q. And that's displayed on Exhibit 5?

24 A. Yes, it is.

25 Q. Who would be the ultimate market for the

1 EtherLite product?

2 A. Ultimate market would, again, be
3 point-of-sale type applications. It could
4 be an end user, because it's a network. It
5 could also be purchased by a systems
6 integrator.

7 Q. And who would be the -- you probably
8 answered that, but who would be the
9 purchasers of the EtherLite product?

10 A. So it could be an end user, or a systems
11 integrator, someone that's deploying a
12 system.

13 (Exhibit 6 marked for
14 identification.)

15 BY MR. BOYLE:

16 Q. Showing you what's been marked as Exhibit 6,
17 do you recognize this document?

18 A. Yes, I do.

19 Q. Can you tell us what this is.

20 A. It is a product data sheet for the
21 Digi One IA device server.

22 Q. And this also comes from the Digi web site?

23 A. Yes, it does.

24 Q. And does this product, Digi One IA, which is
25 in Exhibit 6, have a POS application?

1 A. No, it does not.

2 Q. Does the product Digi One IA, which is part
3 of Exhibit 6, have a bar code reading
4 application?

5 A. Yeah. Actually, it could be used in a bar
6 code type application.

7 Q. And this product, likewise, displays a
8 copyright notice in this Exhibit 6?

9 A. Yes, it does.

10 Q. What are the applicable dates?

11 A. 1999 to 2002.

12 Q. Who would be the purchaser of the
13 Digi One IA, which is in Exhibit 6?

14 A. Again, a systems integrator, predominantly.

15 It could be an end user, trying to
16 tie industrial connectivity solutions.

17 Q. And who would be the ultimate market for the
18 product, which is displayed in Exhibit 6?

19 A. IA is targeted primarily for either
20 logistics or industrial type applications.

21 (Exhibit 7 marked for
22 identification.)

23 BY MR. BOYLE:

24 Q. Mr. Young, showing you what's been marked as
25 Deposition Exhibit 7, do you recognize this

1 document?

2 A. Yes, I do.

3 Q. Can you tell us what this is.

4 A. This is a product data sheet for the
5 Digi One EM product.

6 Q. And this data sheet, which is Exhibit 7, is
7 also displayed on the Digi web site?

8 A. Yes, it is.

9 Q. And what is the function of the Digi One EM
10 product which is in Exhibit 7?

11 A. The Digi One EM product is an embedded
12 ethernet-to-serial module, connectivity
13 module, so it's designed for embedded
14 applications.

15 Q. And does this product, which is in
16 Exhibit 7, have any point-of-sale
17 application?

18 A. Yes. It could be, because it could be
19 incorporated into any type of variety of
20 different products.

21 Q. I note on the exhibit it makes reference to
22 "industrial automation."

23 Can you give us an example of how
24 this would be used in an industrial
25 automation application.

1 A. Well, in the case of Digi One EM, it could
2 be used in the case of industrial, where
3 it's hooking up a scanner, or hooking
4 directly onto a PLC or a controller, could
5 be used in access control.

6 Because it's an embedded product,
7 the solutions are pretty much endless.

8 Q. When you refer to "embedded," and you used
9 that before, you are talking about this is
10 integrated inside another system?

11 A. Yes, so the original equipment manufacturer
12 would buy the module from Digi and use it to
13 build their own product.

14 Q. So in other words, it's not a stand-alone
15 product, but it's actually integrated or
16 incorporated in another product?

17 A. Correct. It's not a stand-alone product.

18 Q. And like the other exhibits, does Exhibit 7
19 have reference to applicable copyright
20 dates?

21 A. Yes, it does.

22 Q. And what are those dates?

23 A. 1999 to 2002.

24 Q. Who would be the purchaser of this product?

25 A. An OEM, someone that was going to create or

1 build a product for sale.

2 So different from the other ones
3 where it was a systems integrator, someone
4 actually has to be in the product
5 development business to buy this product.

6 Q. And when you use the acronym OEM, you are
7 referring to original equipment
8 manufacturer?

9 A. Yes.

10 Q. Who would be the ultimate market for this
11 product?

12 A. The ultimate market is endless. It could be
13 access control, it could be point-of-sale
14 applications.

15 It could be industrial control
16 applications.

17 In this case, it depends on who is
18 actually going to buy the module and what
19 kind of product they want to integrate it
20 in.

21 Any product that might want
22 ethernet connectivity might conceivably use
23 this product.

24 (Exhibit 8 marked for
25 identification.)

1 BY MR. BOYLE:

2 Q. Mr. Young, showing you Deposition Exhibit 8,
3 do you recognize this document?

4 A. Yes, I do.

5 Q. Can you tell us what this product is.

6 A. It is a product data sheet for the Digi One
7 RealPort device server product.

8 Q. And this, likewise, is a data sheet taken
9 from the Digi web site?

10 A. Yes, it is.

11 Q. Can you tell us what the function or
12 application of the Digi One RealPort is
13 that's shown in Exhibit 8.

14 A. The Digi One RealPort is a box product
15 that's intended to provide serial to
16 ethernet type connectivity solutions.

17 Q. And does this product in Exhibit 8 have a
18 POS application?

19 A. Yes, it does.

20 Q. Can you just give us an example of such an
21 application.

22 A. An example would be credit card reader or a
23 printer, very commonly, in retail type
24 applications.

25 Q. And like the other exhibits, does Exhibit 8

1 show or display a copyright applicable date?

2 A. Yes, it does.

3 Q. And can you tell us what that date is.

4 A. 1999 to 2002.

5 Q. Who would be the purchaser of the Digi One
6 RealPort that's shown in Exhibit 8?

7 A. Primarily, a systems integrator, or,
8 actually, an end user; either one.

9 Again, it's network ethernet
10 connectivity, so we sell both ways.

11 Q. And who would be the ultimate market for
12 this product?

13 A. Primarily point-of-sale type applications.
14 Also, deployed in medical applications, as
15 well.

16 Q. And is the Digi One RealPort shown in
17 Exhibit 8 a stand-alone product?

18 A. Yes, it is.

19 (Exhibit 9 marked for
20 identification.)

21 BY MR. BOYLE:

22 Q. Mr. Young, showing you what's been marked as
23 Deposition Exhibit 9, do you recognize this
24 document?

25 A. Yes, I do.

1 Q. Can you tell us what this is.

2 A. It's a product data sheet for the Digi One
3 IA RealPort device server.

4 Q. And this, likewise, is displayed on Digi's
5 web site?

6 A. Yes, it is.

7 Q. And does Exhibit 9 also display an
8 applicable copyright date?

9 A. Yes, it does.

10 Q. Can you tell us what that is.

11 A. 1999 to 2002.

12 Q. Does this product have a POS application?

13 A. Could be, but primarily it's targeted for
14 industrial control applications.

15 Q. Is this a stand-alone product?

16 A. Yes, it is.

17 Q. Who would be the purchaser of this product?

18 A. A systems integrator, mostly. It could also
19 be an end user, depending upon who is
20 putting the system together.

21 Q. Is this product used -- can this product be
22 used in the hospitality industry?

23 A. I suppose it could. Again, it's generally
24 targeted for industrial control type
25 applications.

1 Q. Who would be the ultimate market for this
2 product?

3 A. Mostly industrial, you know, factories or
4 logistics, automation, process control.

5 (Exhibit 10 marked for
6 identification.)

7 BY MR. BOYLE:

8 Q. Mr. Young, showing you what's been marked as
9 Exhibit 10, do you recognize this document?

10 A. Yes, I do.

11 Q. Can you tell us what that is.

12 A. This is the product data sheet for the
13 Digi One SP device server product.

14 Q. This product is shown on the Digi web site?

15 A. Yes, it is.

16 Q. And does Exhibit 10 also display an
17 applicable copyright date?

18 A. Yes, it does.

19 Q. What are those dates?

20 A. 1999 to 2002.

21 Q. Does this product, the Digi One SP, have a
22 POS application?

23 A. Yes, it does.

24 Q. Can you tell us what that application is.

25 A. Primarily -- similar to the Digi One

1 RealPort, serial-to-ethernet connectivity,
2 usually for scanners; could also be used for
3 credit card readers, point-of-sale printers.

4 It's one port, so it's targeted for
5 hooking up one device at a time onto an
6 ethernet network.

7 Q. Is this a stand-alone product?

8 A. Yes, it is.

9 Q. Who would be the purchaser of this product,
10 which is in Exhibit 10?

11 A. Primarily, a systems integrator. It could
12 also be an end user if they had systems
13 integration type capabilities.

14 Q. And who would be the ultimate market for
15 this product?

16 A. Primarily point-of-sale. We have also sold
17 these into industrial and hospitality and
18 building control applications, as well.

19 Q. I see on the diagram on the first page of
20 Exhibit 10 there is a reference to a
21 hand-held scanner?

22 A. Yes.

23 Q. So it could be used for a scan application?

24 A. Yes.

25 (Exhibit 11 marked for

identification.)

BY MR. BOYLE:

Q. Showing you what's been marked as Deposition Exhibit 11, do you recognize this document?

A. Yes, I do.

Q. Can you tell us what this is.

A. It is a product data sheet for the Digi One TS device server product.

Q. And this Exhibit 11 is, likewise, a copy of information published on the Digi web site?

A. Yes, it is.

Q. Does this also display an applicable copyright date?

A. Yes, it does.

Q. Can you tell us what that date is.

A. 1999 to 2002.

Q. Does this product, the Digi One TS, which is in Exhibit 11, have a POS application?

A. Yes, it does.

Q. Can you describe for us what that application is.

A. The application, actually, is similar to the Digi One TS -- the application is similar to those, also, in the Digi One SP and Digi One RealPort.

1 (A discussion was held off the
2 record.)

3 BY MR. BOYLE:

4 Q. The Digi One TS in Exhibit 11, is that also
5 a stand-alone product.

6 A. Yes, it is.

7 Q. Who would be the purchaser of this product,
8 which is in Exhibit 11?

9 A. A systems integrator or possibly an end
10 user. It has systems integration type
11 capabilities.

12 Q. Who would be the ultimate market for this
13 product?

14 A. Point-of-sale or building control type
15 applications.

16 (Exhibit 12 marked for
17 identification.)

18 BY MR. BOYLE:

19 Q. Showing you Deposition Exhibit 12, do you
20 recognize this document?

21 A. Yes, I do.

22 Q. Can you tell us what this is.

23 A. This is a product data sheet for the
24 Digi One CM console management server
25 product.

1 Q. And this, likewise, is displayed on the Digi
2 web site?

3 A. Yes, it is.

4 Q. Does this product have a POS application?

5 A. Generally not. It's primarily used for
6 enterprise, console or server management.

7 Q. Does the web site data sheet in Exhibit 12
8 also display an applicable copyright date?

9 A. Yes, it does.

10 Q. Can you tell us what that date is.

11 A. 1992 -- 1999 to 2002.

12 Q. Is this a stand-alone product?

13 A. Yes, it is.

14 Q. Who would be the purchaser of this product
15 shown in Exhibit 12?

16 A. It could be an integrator. Also, a
17 corporate IT -- information technology
18 groups.

19 Q. And who would be the ultimate market for
20 this product?

21 A. Corporate -- corporate user applications,
22 server farms, Internet service providers,
23 anybody that has a large data center.

24 Q. Could the product the Digi CM in Exhibit 12
25 be used in a network at a store or retailer?

1 A. Yes, it could be used in the back server
2 room, or managing the servers in a retail
3 application.

4 Q. If I could just have you go back and look at
5 Exhibit 5, which is the EtherLite.

6 A. Yes.

7 Q. I just wanted to clarify, is that a
8 stand-alone product?

9 A. Yes, it is.

10 (Exhibit 13 marked for
11 identification.)

12 BY MR. BOYLE:

13 Q. Showing you what's been marked as
14 Exhibit 13, do you recognize this document?

15 A. Yes, I do.

16 Q. Can you tell us what this is.

17 A. It is a product data sheet for the Digi Neo
18 multi-port serial adapter card.

19 Q. And this is a data sheet that's taken from
20 the Digi web site?

21 A. Yes, it is.

22 Q. And does this Exhibit 13 also display
23 applicable copyright dates?

24 A. Yes, it does.

25 Q. Can you tell us what those are.

1 A. 1999 to 2002.

2 Q. Can you tell us generally what the Digi Neo
3 product does that's shown in Exhibit 13.

4 A. The Digi Neo product, similar to the
5 AccelePort product that we talked about
6 earlier, ask for adding serial ports to an
7 existing computer, multiple serial ports.

8 Q. I take it this is not a stand-alone product?

9 A. No, it is not.

10 Q. It's something that you put into another
11 system?

12 A. That's correct.

13 Q. And does this have a point-of-sale
14 application?

15 A. Yes, it does.

16 Q. Can you tell us what that application is.

17 A. Connecting -- it adds ports to a computer so
18 that multiple point-of-sale type peripheral
19 devices can be hooked up.

20 Examples would be credit card
21 readers or printers, scanners.

22 Q. Who would be the purchaser of the product
23 that's shown in Exhibit 13?

24 A. Systems integrator, putting together a
25 system of some kind.

1 And not an end user, because it has
2 to be incorporated inside a system.

3 Q. And related to that, who would be the
4 ultimate market for these products?

5 A. Could be point-of-sale type application,
6 primarily, other hospitality or -- maybe
7 building controls.

8 (Exhibit 14 marked for
9 identification.)

10 BY MR. BOYLE:

11 Q. Showing you what's been marked as Deposition
12 Exhibit 14, do you recognize this document?

13 A. Yes, I do.

14 Q. Can you tell us what this is.

15 A. It is a product data sheet for the
16 PortServer TS2, the PortServer TS4 device
17 server products.

18 Q. Do you recognize Exhibit 14 as being taken
19 from the Digi web site?

20 A. Yes.

21 Q. And it's the published or advertised data
22 sheet for that product?

23 A. Yes.

24 Q. Does Exhibit 14 also display an applicable
25 copyright date?

1 A. Yes, it does.

2 Q. Can you tell us what those dates are.

3 A. 1999 to 2002.

4 Q. Can you tell us what the application is for
5 the PortServer TS2/4?

6 A. Yes, so the application is serial to
7 ethernet type connectivity application,
8 similar to the Digi One SP or the
9 Digi One TS products.

10 Q. And does the product displayed in Exhibit 14
11 have a POS application?

12 A. Yes, it does.

13 Q. Can you tell us what that is.

14 A. Similar to the SP or TS products, it
15 connects -- it could be used to connect
16 point-of-sale peripherals back to a
17 computer.

18 Examples would be a scanner, a
19 printer, credit card reader.

20 Q. And similar to some of the other exhibits we
21 looked at, there is actually a displayed
22 potential configuration on the front page;
23 is that right?

24 A. Yes.

25 Q. And it shows it being hooked up to a bar

1 code scanner and a credit card reader?

2 A. That is correct.

3 Q. And those would be applications this product
4 would be used for?

5 A. Yeah.

6 Q. Who would be the purchaser of the product
7 shown in Exhibit 14?

8 A. Could be a systems integrator or an end
9 user. Again, since it's tied to an Ethernet
10 network, end users often could also purchase
11 it, similar to the other ethernet
12 connectivity products.

13 Q. This is a stand-alone product?

14 A. Yes, it is.

15 Q. Who would be the ultimate market for the
16 product shown in Exhibit 14?

17 A. Could be point-of-sale, building controls,
18 hospitality.

19 (Exhibit 15 marked for
20 identification.)

21 BY MR. BOYLE:

22 Q. Showing you what's been marked as
23 Exhibit 15, do you recognize this document?

24 A. Yes, I do.

25 Q. Can you tell us what this is.

1 A. This is a product data sheet for the
2 PortServer TS2 and PortServer TS4 MEI
3 product.

4 Q. And Exhibit 15 is a page or advertisement
5 from the Digi web site?

6 A. Yes, it is.

7 Q. And it shows the data sheet on the web site?

8 A. Yes, it does.

9 Q. Can you tell us what the function is of the
10 product shown in Exhibit 15.

11 A. The function is actually the same as the
12 previous product, the TS2 and the TS4. It
13 could be used for serial-to-ethernet
14 connectivity.

15 The difference here is it has a
16 multi-electrical interface on the serial
17 port, so a different type of serial port.

18 Q. Does the product in Exhibit 15 have a POS
19 application?

20 A. Yes, it does.

21 Q. Can you tell us -- or give us an example of
22 the type of application.

23 A. It could be used to connect -- similar to a
24 PortServer TS2 and 4, previously mentioned,
25 connect a bar code reader, credit card,

1 printer, other point-of-sale peripherals.

2 Q. Who would be the purchaser of the product
3 shown in Exhibit 15?

4 A. Primarily a systems integrator or an end
5 user. Again, it's ethernet connectivity, so
6 end users could easily buy this product, as
7 well.

8 Q. And who would be the ultimate market for the
9 product shown in Exhibit 15?

10 A. Similar to the PortServer TS2 and 4, could
11 be point-of-sale, hospitality, building
12 control, medical.

13 Q. I don't recall if I asked, but this,
14 likewise, shows copyright dates?

15 A. Yes, it does.

16 Q. And what are those dates?

17 A. 1999 to 2002.

18 (Exhibit 16 marked for
19 identification.)

20 BY MR. BOYLE:

21 Q. One last question on Exhibit 15.

22 Is that a stand-alone product?

23 A. Yes, it is.

24 Q. Showing you what's been marked as Deposition
25 Exhibit 16, do you recognize that document?

1 A. Yes, I do.

2 Q. And can you tell us what that is.

3 A. It is a product data sheet for the
4 PortServer TS8 and 16 products.

5 Q. And is Exhibit 16 taken from the Digi web
6 site?

7 A. Yes, it is.

8 Q. And does Exhibit 16 also display applicable
9 copyright dates?

10 A. Yes, it does, 1999 to 2002.

11 Q. Can you tell us, generally, what the
12 function is of the equipment or device in
13 Exhibit 16.

14 A. Yes. The PortServer TS8 and 16, similar to
15 the other PortServer TS, provides
16 serial-to-ethernet connectivity.

17 The difference here is that it has
18 a much larger number of serial ports, so you
19 can connect a much larger number of devices.

20 Q. Is the product displayed in Exhibit 16 a
21 stand-alone product?

22 A. Yes, it is.

23 Q. And can you tell us how -- does this product
24 relate to a POS application?

25 A. Yes. Yes, it does, the same way the

1 previous PortServer TS2 and 4 related,
2 connecting peripheral type of --
3 point-of-sale peripheral type devices.

4 Q. Who would be the purchaser of the product
5 shown in Exhibit 16?

6 A. Could be an integrator or, actually, an end
7 user; either one.

8 Q. And who would be the market for the product
9 shown in Exhibit 16?

10 A. Primarily point-of-sale. Also, hospitality,
11 building controls.

12 I guess that's --

13 (Exhibit 17 marked for
14 identification.)

15 BY MR. BOYLE:

16 Q. Showing you what's been marked as
17 Exhibit 17, do you recognize that document?

18 A. Yes, I do.

19 Q. Can you tell us what this is.

20 A. This is a product data sheet for the
21 Digi Flex and PortServer TS2 products.

22 Q. And this page, Exhibit 17, is taken from the
23 Digi web site?

24 A. Yes.

25 Q. And are these stand-alone products?

1 A. Yes, they are.

2 Q. And does this Exhibit 17 from the Digi web
3 site also display applicable copyright
4 dates?

5 A. Yes, it does.

6 Q. What are those?

7 A. 1999 to 2002.

8 Q. Can you tell us what the function is of the
9 product shown in Exhibit 17.

10 A. These products are serial-to-ethernet box
11 products. Very similar to the TS8 and 16
12 and the TS2 and the TS4, just some different
13 features.

14 Q. Do the products shown in Exhibit 17 have a
15 point-of-sale application?

16 A. Yes, they do.

17 Q. Can you just briefly tell us what they are.

18 A. That would be connector point-of-sale
19 peripherals such as printers or bar code
20 scanners or credit card readers.

21 Q. Who would be the purchaser of the product
22 shown in Exhibit 17?

23 A. Systems integrator or possibly an end user.

24 Q. And who would be the ultimate market for the
25 products shown in Exhibit 17?

1 A. The same for the other PortServer products,
2 so it could be point-of-sale, could be a
3 building control, could be medical,
4 hospitality.

5 (Exhibit 18 marked for
6 identification.)

7 BY MR. BOYLE:

8 Q. Showing you what's been marked as Deposition
9 Exhibit 18, do you recognize this product?

10 A. Yes, I do.

11 Q. Can you tell us what Exhibit 18 displays.

12 A. This is a product data sheet for the
13 PortServer II product.

14 Q. And this is taken from the Digi web site?

15 A. Yes, it is.

16 Q. Is this a stand-alone product?

17 A. Yes, it is.

18 Q. And can you tell us what the PortServer II
19 shown in Exhibit 18 does.

20 A. The PortServer II is a serial-to-ethernet
21 connectivity box. It generally has 16 to up
22 to 64 ports, and it's actually a predecessor
23 to the PortServer TS products.

24 Q. And does the product in Exhibit 18 have a
25 POS application?

1 A. Yes, it does.

2 Q. Can you tell us what that is.

3 A. Similar to the PortServer TS products,
4 connecting point-of-sale type peripheral
5 devices such as scanners, credit card
6 readers, printers, et cetera.

7 Q. Who would be the purchaser of the
8 PortServer II shown in Exhibit 18?

9 A. Primarily a systems integrator, or it could
10 also be an end user.

11 Q. Who would be the ultimate market for this
12 product in Exhibit 18?

13 A. It could be a point-of-sale market.
14 PortServer II is also deployed in enterprise
15 data center type applications, as well, or
16 hospitality or building controls.

17 Q. And does Exhibit 18 also show an applicable
18 copyright date?

19 A. Yes, it does.

20 Q. What is that date?

21 A. 1999 to 2001.

22 (Exhibit 19 marked for
23 identification.)

24 BY MR. BOYLE:

25 Q. Showing you what's been marked as Deposition

1 Exhibit 19, do you recognize this document?

2 A. Yes, I do.

3 Q. Can you tell us what this is.

4 A. This is the product data sheet for the
5 AccelePort Xr 920, which is a multi-port
6 serial adapter card.

7 Q. And because this is an adapter card, this
8 would not be a stand-alone product?

9 A. That is correct.

10 Q. It would go into another system?

11 A. It would plug in -- add serial ports to a
12 computer system.

13 Q. Can you tell us what the function is of the
14 equipment shown in Exhibit 19.

15 A. Yes. So similar to the other AccelePort
16 products that we discussed earlier, this is
17 to connect multiple type of serial interface
18 type peripherals back into a central
19 computer.

20 Q. And does the device in Exhibit 19 have a POS
21 application?

22 A. Yes, it does.

23 Q. Can you tell us what that application is.

24 A. It could be used to connect point-of-sale
25 peripherals, everything from cash registers

1 to bar code scanners, printers, credit card
2 readers.

3 Q. Who would be the purchaser of the product
4 shown in Exhibit 19?

5 A. Systems integrator, primarily.

6 Q. Who would be the ultimate market for the
7 product shown in Exhibit 19?

8 A. Ultimate market would be point-of-sale,
9 hospitality, industrial, control
10 applications, medical, other data collection
11 type applications.

12 Q. And I would note in the Overview it actually
13 refers to this having a retail point-of-sale
14 application; is that right?

15 A. That's correct.

16 Q. And does this product also display
17 applicable copyright dates?

18 A. Yes, it does.

19 Q. What are those dates?

20 A. 1999 to 2002.

21 (Exhibit 20 marked for
22 identification.)

23 BY MR. BOYLE:

24 Q. Showing you what's been marked as Deposition
25 Exhibit 20, do you recognize this document?

1 A. Yes, I do. It is a product data sheet for
2 the AccelePort C/X multi-port serial adapter
3 card.

4 Q. Is this a stand-alone product?

5 A. No, it is not.

6 Q. Can you tell us what this product does.

7 A. This product provides serial connectivity
8 back to a central server, similar to the
9 AccelePort Xr 920 except that it tends to
10 provide longer distance connectivity.

11 Q. And Exhibit 20, like the other exhibits we
12 have seen, is taken from the Digi web site?

13 A. Yes, it is.

14 Q. And does this Exhibit 20 also show
15 applicable copyright dates?

16 A. Yes, it does.

17 Q. Can you tell us what those dates are.

18 A. 1999 to 2002.

19 Q. Does the AccelePort C/X shown in Exhibit 20
20 have a POS application?

21 A. Yes, it do.

22 Q. Can you tell us what that application is?

23 A. It would be to connect point-of-sale
24 peripheral devices, like credit card
25 readers, scanners, printers, cash registers,

1 back to a central system.

2 Q. Who would be the purchaser of the product
3 shown in Exhibit 20?

4 A. Systems integrator.

5 Q. Who would be the ultimate market for the
6 product shown in Exhibit 20?

7 A. Could be point-of-sale or industrial
8 connectivity, hospitality, any of those.

9 (Exhibit 21 marked for
10 identification.)

11 BY MR. BOYLE:

12 Q. Showing you what's been marked as Deposition
13 Exhibit 21, do you recognize this document?

14 A. Yes, I do.

15 Q. Can you tell us what this is.

16 A. This is a product data sheet for the
17 AccelePort EPC/X product. It is a
18 multi-port serial adapter expansion -- card
19 and expansion module.

20 Q. Is this a stand-alone product?

21 A. No, it is not.

22 Q. And does Exhibit 21 also show applicable
23 copyright dates?

24 A. Yes, it does.

25 Q. What are those dates?

1 A. 1999 to 2001.

2 Q. And is Exhibit 21 also shown on the Digi web
3 site?

4 A. Yes, it is.

5 Q. Does Exhibit 21 -- the device shown in
6 Exhibit 21 have a POS application?

7 A. Yes, it does.

8 Q. Can you tell us what that is.

9 A. It would be connecting point-of-sale
10 peripherals back to a central server,
11 similar to the products we talked about
12 before, like the AccelePort C/X or the
13 AccelePort Xr 920.

14 Q. And what types of things would it connect?

15 A. Could connect credit card readers, printers,
16 cash registers. Yeah.

17 Q. Who would be the purchaser of the device
18 shown in Exhibit 21?

19 A. Systems integrator.

20 Q. Who would be the ultimate market for the
21 product shown in Exhibit 21?

22 A. Could be point-of-sale, hospitality,
23 industrial, data collection applications,
24 building controls.

25 (Exhibit 22 marked for

1 identification.)

2 BY MR. BOYLE:

3 Q. Showing you what's been marked as Deposition
4 Exhibit 22, do you recognize this document?

5 A. Yes, I do.

6 Q. Can you tell us what this is.

7 A. This is a product data sheet for the
8 AccelePort Xem serial port expansion
9 product.

10 Q. And is Exhibit 22 taken from the Digi web
11 site?

12 A. Yes, it is.

13 Q. Is this a stand-alone product?

14 A. No, it is not.

15 Q. Does Exhibit 22 also display applicable
16 copyright dates?

17 A. Yes, it does.

18 Q. Can you tell me what those are.

19 A. 1999 to 2001.

20 Q. What is the function of the device shown in
21 Exhibit 22?

22 A. This is a serial port expansion product for
23 adding additional serial ports back to a
24 central computer.

25 Q. Does the product in Exhibit 22 have a POS

1 application?

2 A. Yes, it does.

3 Q. Can you tell us what that is.

4 A. Could be connecting point-of-sale
5 peripherals, such as bar code scanners,
6 printers, credit card readers, cash
7 registers, back to a central computer.

8 MR. ANISSIMOFF: Could we refer to
9 that as the usual application? I would be
10 okay with that.

11 BY MR. BOYLE:

12 Q. All right. For the future, we will refer to
13 that as the usual POS application.

14 A. Usual POS application. All right.

15 (A discussion was held off the
16 record.)

17 BY MR. BOYLE:

18 Q. Who would be the purchaser of the product
19 referred to in Exhibit 22?

20 A. Systems integrator.

21 Q. And who would be the ultimate market for the
22 product shown in Exhibit 22?

23 A. The same markets that we have talked about,
24 the other AccelePort products,
25 point-of-sale, retail, hospitality,

1 industrial, medical, building controls.

2 (Exhibit 23 marked for
3 identification.)

4 BY MR. BOYLE:

5 Q. Showing you what's been marked as Deposition
6 Exhibit 23, do you recognize this document?

7 A. Yes, I do.

8 Q. Can you tell us what this is.

9 A. It is the product data sheet for the
10 AccelePort RAS adapter product.

11 Q. Is the product in Exhibit 23 a stand-alone
12 product?

13 A. No, it is not.

14 Q. It's integrated into other systems?

15 A. Yes, it is.

16 Q. And is Exhibit 23 taken from the Digi web
17 site?

18 A. Yes, it is.

19 Q. Can you tell us what the device in
20 Exhibit 23 does, what's its function.

21 A. It provides modems or dial-in modems for
22 connectivity to a central server.

23 Q. And does the device in Exhibit 23 have a POS
24 application?

25 A. Could be. It's primarily used as, as I

1 said, a remote access to a central server,
2 so it could be used in an ISP or any kind of
3 application where you need a remote access
4 type of connectivity.

5 Q. What do you mean when you refer to "ISP"?

6 A. Internet service provider.

7 Q. Could this have some functional application
8 in a POS application?

9 A. Yes, it could.

10 Q. Who would be the purchaser of the product
11 shown in Exhibit 23?

12 A. Systems integrator, primarily.

13 Q. Who would be the ultimate market for the
14 product shown in Exhibit 23?

15 A. Those that want to have remote connectivity
16 type of data center, so it's a very
17 horizontal type application market.

18 (Exhibit 24 marked for
19 identification.)

20 BY MR. BOYLE:

21 Q. Just for clarification, what do you mean by
22 "horizontal type application"?

23 A. "Horizontal" meaning that it's generally
24 applicable to anybody that would want to do
25 remote access, remote dial-in kind of

1 connectivity, so if the point-of-sale
2 application needed remote access to a host,
3 they would use it.

4 If -- or if anybody else that
5 needed -- you, from your home, for instance,
6 wanted to dial in to a remote computer
7 system, you might use this kind of product.

8 Q. Showing you Deposition Exhibit 24, do you
9 recognize this document?

10 A. Yes, I do.

11 Q. Can you tell us what this is.

12 A. It is a product data sheet for the Digi Neo
13 multi-port serial adapter card.

14 Q. And the Digi Neo shown in Exhibit 24, is
15 that also taken from the Digi web site?

16 A. Yes, it is.

17 Q. And does the Digi Neo in Exhibit 24 -- does
18 that display also show applicable copyright
19 dates?

20 A. Yes, it does.

21 Q. Can you tell me what those are.

22 A. 1999 to 2001.

23 Q. Can you tell us what the function is of the
24 Digi Neo shown in Exhibit 24?

25 A. Yeah, it adds serial ports to a central

1 server. It's actually the same product as
2 we discussed in Exhibit 13.

3 Q. And I take it the Digi Neo in Exhibit 24 is
4 not a stand-alone product?

5 A. That's correct.

6 Q. It's integrated into another system?

7 A. It is integrated into another system.

8 Q. Does the Digi Neo shown in Exhibit 24 have a
9 POS application?

10 A. Yes. The usual point-of-sale applications.

11 Q. Who would be the purchaser of the product
12 shown in Exhibit 24?

13 A. A systems integrator.

14 Q. Who would be the ultimate market for the
15 product shown in Exhibit 24?

16 A. Same as I mentioned with Exhibit 13.

17 (Exhibit 25 marked for
18 identification.)

19 BY MR. BOYLE:

20 Q. You said same as you referenced in
21 Exhibit 13.

22 Did you mean 13 or 23?

23 A. Actually, 13.

24 Q. Oh, 13. Okay.

25 A. Digi -- you have two --

1 Q. Oh, I see.

2 A. The Digi Neo data sheet in 24 and the Digi
3 Neo product in 13 are exactly the same
4 product, just a newer version of the data
5 sheet.

6 Q. Okay. So same function, same market?

7 A. Yes.

8 Q. Showing you what's been marked as Deposition
9 Exhibit 25, do you recognize this document?

10 A. Yes, I do.

11 Q. Can you tell us what this is.

12 A. It is a spec sheet for the AnywhereUSB
13 product.

14 Q. And is the display on Exhibit 25 also taken
15 from the Digi web site?

16 A. Yes, it is.

17 Q. And does it also show an applicable
18 copyright date?

19 A. Yes, it does.

20 Q. What is that date?

21 A. 2001.

22 Q. Is the device shown in Exhibit 25 a
23 stand-alone product?

24 A. Yes, it is.

25 Q. Can you tell us what its function is.

1 A. Its function is to put USB type of connected
2 peripherals on an ethernet network so they
3 can be tied back to a central computer.

4 Q. And does the device shown in Exhibit 25 have
5 a POS application?

6 A. Yes, it does.

7 Q. Can you tell us what those functions are.

8 A. It's to connect peripherals in the usual POS
9 type that we have discussed earlier, the
10 difference being here is peripherals have
11 evolved from serial ports to USB ports, so
12 we now have USB ports instead of traditional
13 serial ports.

14 Q. Can you give us applications of the
15 application to a USB function.

16 A. Well, it could be a credit card reader, a
17 scanner, the usual type of devices.

18 It could also be cameras, since we
19 have -- there is USB cameras, as well.

20 Q. Who would be the purchaser of the product
21 shown in Exhibit 25?

22 A. Primarily a systems integrator. Could be an
23 end user, if they were tied onto an ethernet
24 network.

25 Q. And who would be the ultimate market for the

1 product shown in Exhibit 25?

2 A. The market for AnywhereUSB would be
3 point-of-sale. Also, security applications
4 where there is monitoring with cameras, and
5 so building controls, also.

6 (Exhibit 26 marked for
7 identification.)

8 BY MR. BOYLE:

9 Q. Showing you what's been marked as Deposition
10 Exhibit 26, do you recognize this document?

11 A. Yes, I do.

12 Q. Can you tell me what this is.

13 A. It is the data sheet for the Edgeport/1
14 product.

15 Q. And can you tell us what this device is.

16 A. The Edgeport/1 is a serial-to-USB
17 conversion. It allows you to connect serial
18 type of devices back to a USB port.

19 Q. Is this a stand-alone product?

20 A. No, it is not.

21 Q. You attach it to another system?

22 A. Yeah. It needs to be plugged into either an
23 AnywhereUSB product or a USB port on a
24 computer.

25 Q. And does the product shown in Exhibit 26

1 have a POS application?

2 A. Yes, it does.

3 Q. Can you tell me what those are.

4 A. Primarily, to connect the usual type of
5 devices, whether they be scanners, printers,
6 credit card readers, back to a computer
7 system.

8 Q. And is Exhibit 26 taken from the web site
9 for Digi?

10 A. Yes, it is.

11 Q. Does Exhibit 26 also display a copyright
12 date?

13 A. Yes, it does.

14 Q. What's the date?

15 A. 2001.

16 Q. And who would be the purchaser of the
17 product shown in Exhibit 26?

18 A. Primarily, a systems integrator. Could also
19 be an end user if they already have, say,
20 some peripherals that they want to glue
21 together into a new system.

22 Q. And who would be the ultimate market for the
23 product shown in Exhibit 26?

24 A. Point-of-sale, primarily. It could also be
25 used in some building control type

1 applications.

2 Q. I have just shown you Exhibits 1 through 26,
3 which are taken from the Digi web site, and
4 my question is, are these true and accurate
5 copies of those displays from the web site?

6 A. Yes, they are.

7 Q. And are those displays kept in the ordinary
8 course of business at Digi?

9 A. Yes.

10 (A recess was taken and
11 Exhibit 27 marked for
12 identification.)

13 BY MR. BOYLE:

14 Q. Mr. Young, showing you Deposition
15 Exhibit 27, which is a series of 58 pages of
16 documents, do you generally recognize what
17 Exhibit 27 is?

18 A. Yes.

19 Q. Can you tell me what it is.

20 A. It looks like either pages or spec sheets or
21 data sheets taken from the Digi web site.

22 Q. Looking at the first page of Exhibit 27,
23 page 1, can you tell me what that document
24 is.

25 A. This looks like the home page of the Digi

1 web site.

2 Q. For the web site?

3 A. Yes.

4 Q. And is this how the web site currently looks
5 if one enters the Digi web site?

6 A. Yes.

7 Q. And is there a reference on this first
8 page 1 of Exhibit 27 to "Retail/POS"
9 application?

10 A. Yes, there is, over on the right-hand side.

11 Q. If you go to the second page of Exhibit 27,
12 can you tell me what that is.

13 A. That would be the page describing Retail/POS
14 from the web site, so I think it's the link.

15 I think it's actually the link if
16 you hit the Retail/POS button on the
17 previous page.

18 Q. So if one goes to the web site and hits
19 Retail/POS on page 1 of Exhibit 27, it will
20 take them to the Retail/POS section which is
21 shown on page 2 of Exhibit 27?

22 A. That is correct.

23 Q. Now, earlier we were looking at Exhibits 1
24 through 26, and just so the record is clear,
25 are these the historical web pages from the

1 web site?

2 A. Yes. They are historical data sheets and
3 information from the web site, yes.

4 Q. So they would be the relevant web page
5 sites -- or web page screens that were shown
6 for the applicable copyright periods that
7 you described earlier?

8 A. Yes, that's correct.

9 Q. And in contrast, Exhibit 27, would that show
10 the current state of the web site?

11 A. Yes.

12 Q. If you would turn to pages 3 and 4 of
13 Exhibit 27, can you tell me what that is.

14 A. 3 and 4, those are a series of -- it's a
15 page describing different Retail/POS
16 applications, so you click on one of these
17 applications and then you get more detailed
18 information about how that application
19 works.

20 Q. If you go to the Digi web site and it gets
21 you into the Retail/POS area of the web
22 site, then you could find out specifics
23 about particular applications?

24 A. Correct.

25 Q. On page 3 and 4 of Exhibit 27?

1 A. That's correct.

2 Q. So where it says "Learn more," you would hit
3 the button on the computer, or somehow press
4 it, and it would take you to that particular
5 product line?

6 A. Yeah, the "Learn more" would be a link that
7 you would click on, and then you would get
8 another page which would give you that
9 specific application example.

10 Q. And in your position with Digi, are you
11 familiar with the current state of the Digi
12 web site?

13 A. Yes.

14 Q. And you are familiar with the displays from
15 the web site that are shown here on
16 Exhibit 27?

17 A. Yes.

18 Q. Do pages 3 and 4 of Exhibit 27 show the
19 current Retail/POS applications?

20 A. Yes.

21 Q. If you turn to pages 5 and 6 of Exhibit 27,
22 can you tell me what those pages represent.

23 A. So 5 and 6 would be the application-specific
24 information, so as you see, where it
25 says "Reconnect During Network Outages," if

1 you go back to page 3, there is an example
2 "Reconnect During Network Outages," so when
3 you click on the "Learn more" button, then
4 you come to this -- what you see on page 5
5 and 6.

6 Q. And would pages 5 and 6 of Exhibit 27 be a
7 general description of the Reconnect During
8 Network Outages portion of the web site?

9 A. Yes.

10 Q. Going to pages 7 and 8 of Exhibit 27, can
11 you tell me what that is.

12 A. Yes. 7 and 8, that is a product data sheet
13 for the ConnectPort WAN VPN product.

14 Q. Is that a product that you are familiar
15 with?

16 A. Yes.

17 Q. What is the function of the ConnectPort WAN
18 VPN?

19 A. ConnectPort WAN VPN product provides a
20 remote connectivity, so either for ethernet
21 type devices or serial type devices, to a
22 host or application across a cellular
23 network, so a cellular data network.

24 In specific, it's a 3G type of
25 cellular network.

1 Q. And does that product, which is shown at
2 pages 7 and 8 of Exhibit 27, have a POS
3 application?

4 A. Yes, it does.

5 Q. Can you tell us what that application is.

6 A. It is used for remote connectivity, so if
7 you have a small store or storefront and you
8 want to connect back to a headquarters or
9 central location for your -- for connecting
10 any kind of POS devices, whether they might
11 be ethernet connected or serial, then it
12 provides the vehicle for connecting back to
13 a central location without wires.

14 Q. Who would be the purchaser of the product
15 shown at pages 7 and 8 of Exhibit 27?

16 A. It could be a systems integrator or an end
17 user, either one, depending upon your
18 individual integration capabilities.

19 Q. Who would be the ultimate market for the
20 device shown at pages 7 and 8 of Exhibit 27?

21 A. The market is either a distributed type of
22 point-of-sale, or other hospitality or
23 connectivity type applications.

24 Predominant, where you want to
25 connect to a remote location, remote

1 storefront, you need a wireless
2 connectivity.

3 MR. ANISSIMOFF: I am wondering
4 whether we could move from the usual POS
5 applications to the usual answer.

6 MR. BOYLE: Okay. To shorten it?

7 MR. ANISSIMOFF: No, just to help
8 you. I don't object to what you are doing.
9 It's just that I believe -- I may be wrong,
10 but I believe that the witness will answer
11 similarly in each and every case. That's my
12 guess.

13 And I would be happy to stipulate a
14 general answer, if you wish.

15 But I don't mean to interrupt.

16 MR. BOYLE: No, I am happy to speed
17 this thing up.

18 MR. ANISSIMOFF: I am not sure why
19 I want to speed these things up, either.

20 BY MR. BOYLE:

21 Q. With respect to pages 7 and 8, Exhibit 27,
22 how does that relate back to pages 5 and 6
23 of the same exhibit?

24 A. Well, so this would be a -- the ConnectPort
25 WAN VPN would be a product that is used in

1 the application example as described in 5
2 and 6.

3 Q. And for the device shown on pages 7 and 8 of
4 Exhibit 27, is there a reference to the
5 applicable copyright date?

6 A. Yes, there is.

7 Q. What is that?

8 A. That's 2005 to 2006.

9 Q. Turning your attention to pages 9 and 10 of
10 Exhibit 27, can you tell me what that is.

11 A. That would be the zero-client application
12 example, so it's the second item from
13 page -- example from page 3.

14 Q. And if you turn to pages 11 and 12 of
15 Exhibit 27, can you tell me what that is.

16 A. So that would be the product data sheet for
17 the ConnectPort Display zero-client product.

18 Q. Is that a stand-alone product?

19 A. Yes, it is.

20 Q. And is the product we just looked at
21 previously on pages 7 and 8 of Exhibit 27
22 also a stand-alone product?

23 A. Yes, it is.

24 Q. And could you just tell us what the function
25 is of the product on pages 13 and 14 of

1 Exhibit 27.

2 A. 13 and 14 or 11 and 12?

3 Q. I am sorry, I jumped ahead. I am sorry.
4 Let me rephrase.

5 Can you tell me what the function
6 is of the product shown on pages 11 and 12
7 of Exhibit 27.

8 A. Yes. The ConnectPort Display zero-client
9 product is a way of providing remote video
10 display terminal connectivity from a central
11 application server.

12 So it gets rid of or obviates the
13 need for a PC to be replied at a remote
14 terminal location.

15 Q. And does the device at pages 11 and 12 of
16 Exhibit 27 have a POS application?

17 A. Yes, it does.

18 Q. What would that application be?

19 A. Actually doing a point-of-sale checkout type
20 of system, you know, taking people's money.
21 It replaces the PC in that application.

22 Q. Who would be the purchaser of the product
23 shown at pages 11 and 12 of Exhibit 27?

24 A. Primarily, a systems integrator. It could
25 be an end user, but usually someone that's

1 going to integrate it with their
2 point-of-sale software, so a system
3 integrator.

4 Q. And who would be the ultimate market for
5 this product?

6 A. The market is point-of-sale. Also, I guess
7 kiosks, information kiosks, another popular,
8 and remote signage, would be the three.

9 Q. With respect to the device that's shown at
10 pages 11 and 12 of Exhibit 27, would that
11 also connect with a card reader or a
12 printer?

13 A. Yes. Peripherals would connect into the
14 box, as well.

15 Q. And I take it that the ConnectPort Display,
16 which is shown on pages 11 and 12, relate
17 back to the Replace POS Terminals with
18 Zero-Clients pages on 9 and 10 of
19 Exhibit 27?

20 A. That's correct.

21 Q. Can you just tell me what that terminology
22 means, "Replace POS Terminals with
23 Zero-Clients"?

24 A. Well, the term "zero-client" is a term we
25 came up with -- well, let me go back.

1 Usually when you use a personal
2 computer at a location, that would be a
3 client type personal computer.

4 There is another term called a thin
5 client, which is a scaled-down personal
6 computer for the same person.

7 Our -- Digi's notion of a
8 zero-client is we make that thin client so
9 thin that you don't even hardly know it's
10 there.

11 In other words, you don't have to
12 worry about applications running on that,
13 all the application intelligence is back in
14 the server.

15 So you get rid of the need for
16 managing a remote client.

17 Q. And I would take it the way this web site is
18 set up is, for instance, pages 9 and 10
19 describe a problem or a challenge a customer
20 would face in terms of replacing the POS
21 terminal with a zero-client, and then the
22 succeeding product afterwards, the Connect
23 Display on pages 11 and 12, actually show a
24 solution?

25 A. Yeah, that's correct, the product that you

1 would use in creating that solution, yes.

2 Q. And the ConnectPort Display shown at
3 pages 11 and 12 of Exhibit 27 also shows a
4 current copyright date; is that right?

5 A. That's correct.

6 Q. And what is that date?

7 A. That is 2005 to 2006.

8 Q. Turning to pages 13 to 14 of Exhibit 27, can
9 you tell me what that is.

10 A. That is the Eliminate Power Cords for POS
11 Stations application. I think it's the --
12 if I look back on page 3, it is the third
13 application scenario down from page 3.

14 Q. So again, you are here -- there is a
15 description of a problem or a challenge a
16 customer would want to resolve; is that
17 right?

18 A. That's correct.

19 Q. And then the succeeding pages, pages 15 to
20 16 of Exhibit 27, show the recommended
21 equipment to solve that problem?

22 A. That is correct.

23 Q. Look at pages 15 to 16 of Exhibit 27. Can
24 you tell me what that product is.

25 A. Those are the USB Plus product series.

1 These are USB port expansions, USB -- so
2 they provide USB host ports for
3 point-of-sale peripheral connectivity.

4 The key here is that it uses the
5 Power Plus capability, so the power for the
6 peripheral device is also supplied over the
7 same port connector.

8 Q. And does the product which is shown at
9 pages 15 and 16 of Exhibit 27 have a POS
10 application?

11 A. Yes, it does.

12 Q. Can you tell us what that application is.

13 A. It's the usual connectivity. The key here
14 to note is that it eliminates all power
15 cords.

16 Q. And is there a copyright notice on pages 15
17 and 16 of Exhibit 27?

18 A. Yes, it is.

19 Q. And what are the applicable dates?

20 A. 2003 to 2006.

21 Q. And who would be the purchaser of the
22 product shown at Exhibit -- excuse me,
23 pages 15 and 16 of Exhibit 27?

24 A. Could be -- primarily a systems integrator.
25 Could be an end user for some of the

1 packaged products and boxes, but really,
2 it's targeted mostly at systems integrators
3 that are going to put together a complete
4 system.

5 Q. Who would be the ultimate market for the
6 product shown at pages 15 and 16 of
7 Exhibit 27?

8 A. These products are exclusively targeted at
9 point-of-sale applications.

10 Q. Having you turn to pages 17 and 18 of
11 Exhibit 27, Reduce Size of Retail Stations,
12 I take it this is describing another
13 challenge -- or application that a customer
14 might have?

15 A. That is correct.

16 Q. And this would refer back to the button
17 on --

18 A. On page 3, the fourth one down.

19 Q. -- page 3 of Exhibit 27. Okay.

20 And then the -- it looks like the
21 recommended solution or equipment to solve
22 the problem of reducing size of retail
23 stores is the AnywhereUSB/5?

24 A. That is correct.

25 Q. And is that shown on pages 19 to 20 of

1 Exhibit 27?

2 A. Yes, it is.

3 Q. Can you tell me what the function is of the
4 AnywhereUSB.

5 A. Yeah, the AnywhereUSB provides remote USB
6 connectivity across an ethernet network, so
7 it allows you to move connectivity without
8 having to supply a computer at that
9 location.

10 Q. And is that product a stand-alone product?

11 A. Yes, it is.

12 Q. And the products we looked at earlier on
13 pages 15 and 16 of Exhibit 27, are those
14 stand-alone products?

15 A. Actually, 15 and 16, generally not. They
16 need to be -- to be useful, the PCI cards
17 actually have to be installed inside a host
18 computer system.

19 The boxes, somewhat stand-alone.
20 They still need to be plugged into a
21 computer to be useful.

22 Q. And with respect to pages 19 and 20 of
23 Exhibit 27, is there also a reference to the
24 applicable copyright dates?

25 A. Yes.

1 Q. What are those dates?

2 A. 2003 to 2006.

3 Q. Who would be the purchaser of the
4 AnywhereUSB product shown at pages 19 and 20
5 of Exhibit 27?

6 A. Primarily a systems integrator. Could also
7 be an end user.

8 Q. Who would be the ultimate market for the
9 same product?

10 A. The same markets that we have been talking
11 about.

12 MR. ANISSIMOFF: Off the record.

13 (A discussion was held off the
14 record.)

15 BY MR. BOYLE:

16 Q. Turn to page 21 of Exhibit 27. Would this,
17 again, be another customer challenge or
18 solution that is being discussed?

19 A. Yes, it would.

20 Q. And this would be network-enabled warehouse
21 printers and scanners?

22 A. Yes.

23 Q. And what is the recommended solution for
24 this problem?

25 A. So this would be using a PortServer TS4

1 product.

2 Q. And is a PortServer TS4 product shown at
3 pages 23 to 24 of Exhibit 27?

4 A. Yes, it is.

5 Q. And do those pages also show an applicable
6 copyright period?

7 A. They do.

8 Q. What is that?

9 A. 1999 to 2006.

10 Q. Is the PortServer TS product shown at pages
11 23 and 24 of Exhibit 27 a stand-alone
12 product?

13 A. Yes, it is.

14 Q. Can you tell me what the function is of the
15 PortServer TS product shown at pages 23 and
16 24 of Exhibit 27.

17 A. It is a serial-to-ethernet type of
18 connectivity product. We went over that
19 product earlier. I can't remember the
20 exhibit number.

21 Q. Does it have a POS application?

22 A. Yes, the usual POS application.

23 Q. And who would be the purchaser of this
24 product?

25 A. Integrators, systems integrators, or an end

1 user.

2 Q. Who would be the ultimate market for this
3 product?

4 A. Same markets we have been talking about.

5 Q. Turning your attention to page 25 of
6 Exhibit 27, is this yet another potential
7 problem that a customer might need a
8 solution for?

9 A. Yes.

10 Q. For Expanding Low Profile PCI Systems?

11 A. Correct.

12 Q. Again, one would hit the button on page 3 of
13 Exhibit 27 and that would take them to what
14 we see on page 25 of Exhibit 27?

15 A. That's correct.

16 Q. And what's the solution recommended for this
17 situation?

18 A. A Digi Neo serial port expansion card, the
19 low profile version of that card.

20 Q. And is that card displayed at pages 27 and
21 28 of Exhibit 27?

22 A. Yes, it is.

23 Q. Can you tell me what the function of this
24 Digi Neo card is.

25 A. Yeah. It's to connect serial peripherals

1 back into a computer.

2 We talked about it, also, at
3 Exhibit 13 and Exhibit 24.

4 Q. And are there copyright dates shown on
5 Exhibit -- or excuse me, pages 27 and 28 of
6 Exhibit 27?

7 A. Yes, 2003 to 2006.

8 Q. And does the Digi Neo have the usual
9 applications in a POS application?

10 A. Yes.

11 Q. So it would be a printer, bar code, credit
12 card?

13 A. Yes.

14 Q. Who would be the purchaser of the product,
15 the Digi Neo product?

16 A. Primarily a systems integrator.

17 Q. And who would be the ultimate market for the
18 Digi Neo product?

19 A. The usual market applications.

20 Q. If you turn to pages 29 to 30 of Exhibit 27,
21 again, this is a solution or problem that
22 one would hit a button on page 3 of
23 Exhibit 27 and come to this solution?

24 A. That is correct.

25 Q. So -- and this is Add Serial Ports to a PC

1 via USB?

2 A. That is correct.

3 Q. And what is the recommended solution for
4 this application problem?

5 A. Recommended solution is an Edgeport/4
6 product.

7 Q. By the recommended solution, you are
8 recommending that the customer or the person
9 applying this application use that product;
10 is that correct?

11 A. That is right.

12 Q. And turning to pages 31 to 34 of
13 Exhibit 27, is that the data sheet for the
14 Edgeport product?

15 A. Yes, it is.

16 Q. What is the function of the Edgeport
17 product?

18 A. The Edgeport product provides serial port
19 expansion off of a USB port, so we talked
20 earlier about multiple serial type
21 peripherals.

22 So computers today don't have a lot
23 of slots, but they come with USB ports, so
24 if you want to tie multiple serial type
25 devices in the usual type applications that

1 we have been talking about back into a
2 computer, you might use an Edgeport.

3 Q. And if you look at the diagram on page 31 of
4 Exhibit 27, this has a wide range of POS
5 connectivity solutions?

6 A. That is correct.

7 Q. And many of the standard things that you
8 have already talked about?

9 A. Right.

10 Q. Does the data sheet for the Edgeport at
11 pages 31 to 34 in Exhibit 27 also have a
12 reference to the copyright?

13 A. Yes, it does.

14 Q. What are the applicable dates?

15 A. 2003 to 2006.

16 Q. Who would be the purchaser of the Edgeport?

17 A. Primarily, a systems integrator.

18 Q. And who would be the ultimate market for
19 this project, which is shown at pages 31 to
20 34 of Exhibit 27?

21 A. The same applications we have been talking
22 about.

23 Q. Is this a stand-alone product?

24 A. No. You need to plug it into a computer for
25 it to do anything.

1 Q. Turning your attention to pages 35 to --
2 well, just look at page 35 of Exhibit 27.

3 Again, this is a recommended
4 solution to a problem that is shown on
5 page 3 of Exhibit 27?

6 A. Actually, it's page 4.

7 Q. Oh, you are right, we go to the next page.

8 Backing up, so page 35 of
9 Exhibit 27 is the page on the web site that
10 one would go to if you hit the button for
11 Network-Enable POS Peripherals on page 4 of
12 Exhibit 27?

13 A. That is correct, yes.

14 Q. And the recommended solution is the
15 Digi One?

16 A. Yes, Digi One SP.

17 Q. And if you turn to pages 37 to 38 of
18 Exhibit 27, is that the data sheet on the
19 Digi web site for the Digi One SP?

20 A. Yes.

21 Q. And what is the function of the Digi One SP?

22 A. It is a serial-to-ethernet adapter.

23 I think we discussed it already in
24 one of the previous exhibits. Ah, yes,
25 Exhibit 10. So this is the same product

1 that we discussed in Exhibit 10.

2 Q. Is this a stand-alone product?

3 A. Yes, it is.

4 Q. Does it have a POS application?

5 A. Yes, it does.

6 Q. Who would be the purchaser of this product,
7 which is at pages 37 to 38 of Exhibit 27?

8 A. It would be a systems integrator or an end
9 user.

10 Q. And who would be the ultimate market for the
11 Digi One SP shown at pages 37 to 38 of
12 Exhibit 27?

13 A. Same markets we have been talking about.

14 Q. And would the POS applications be the usual
15 ones you have been describing earlier?

16 A. Yes, it would.

17 Q. Turning your attention to page 39, is this
18 yet another solution page that one would go
19 to if they hit a button on page 4 of
20 Exhibit 27?

21 A. Yes.

22 Q. This is Reduce Gas Station Drive-Offs?

23 A. Yes.

24 Q. I take it this is to keep gas customers from
25 driving off and not paying for their gas?

1 A. That is correct, yes.

2 Q. They do that in Canada, but not in the
3 United States.

4 And the recommended solution is a
5 Watchport/V2 USB camera?

6 A. Yes.

7 Q. And is that particular product displayed at
8 pages 41 to 44 of Exhibit 27?

9 A. Yes.

10 Q. Is that a stand-alone product?

11 A. It needs to -- yes. Well, no, not really.

12 It needs to plug into a computer to
13 be useful, so if you just had one by itself,
14 it wouldn't be useful.

15 So no, it needs to plug into a
16 computer.

17 Q. And does this product, which is at pages 41
18 to 44 of Exhibit 27, have an applicable
19 copyright date that's listed?

20 A. Yes.

21 Q. And what's that date?

22 A. 2003 to 2006.

23 Q. And does this product, the Watchport series
24 product at pages 41 to 44 of Exhibit 27,
25 have a POS application?

1 A. Yes, it does.

2 Q. What is that application?

3 A. Primarily, in kiosk type applications.

4 Q. Is this Watchport series product an external
5 product?

6 A. Yes.

7 Q. So it doesn't function alone, but it's
8 externally attached to something else?

9 A. That is correct.

10 Q. Who would be the purchaser of this Watchport
11 series product shown at pages 41 to 44 of
12 Exhibit 27?

13 A. Systems integrator or a end user, either
14 one.

15 Q. And who would be the ultimate market for the
16 same product?

17 A. Primarily, point-of-sale, retail and
18 security applications, is where it's
19 targeted.

20 Q. Have you look at page 45.

21 If you look at page 45 of
22 Exhibit 27, is that also the page on the web
23 site one would come to if they hit one of
24 these retail POS problem or solution buttons
25 on page 4 of Exhibit 27?

1 A. Yes.

2 Q. This relates to Manage Inventory and POS
3 Checkouts; is that right?

4 A. Yes.

5 Q. And what is the recommended solution for
6 that solution?

7 A. A PortServer TS 16.

8 Q. Is there a data sheet for the
9 PortServer TS16 attached at pages 47 and 48
10 of Exhibit 27?

11 A. Yes.

12 Q. Is that a stand-alone product?

13 A. Yes.

14 Q. Is there an applicable copyright date shown
15 on page 48 of Exhibit 27?

16 A. Yes.

17 Q. What is that?

18 A. 1999 to 2006.

19 Q. Can you tell us generally what the function
20 is of this product shown at pages 47 to 48
21 of Exhibit 27.

22 A. Yeah, it's the serial-to-ethernet
23 connectivity, the usual applications that we
24 talked about before.

25 As a matter of fact, I think it was

1 one of the previous exhibits, we talked
2 specifically about this product.

3 Q. And it would have the usual POS
4 applications?

5 A. Yes, it would.

6 Q. And who would be the purchaser of this
7 product?

8 A. Systems integrator or an end user.

9 Q. Who would be the ultimate market for this
10 product shown at pages 47 to 48 of
11 Exhibit 27?

12 A. All the same markets that we have talked
13 about.

14 Q. Okay. If you turn to page 49 of Exhibit 27,
15 that, again, shows a retail solution that
16 one gets referred to by hitting a button on
17 page 4 of Exhibit 27?

18 A. Yes.

19 Q. And this relates to Integrate Multiple OS's
20 in a POS system?

21 A. Yes.

22 Q. What's the recommended solution for this
23 problem?

24 A. An AccelePort Xem product.

25 Q. And is there a data sheet attached at

1 pages 51 to 52 of Exhibit 27 for that
2 product?

3 A. Yes.

4 Q. What's the function of that product?

5 A. It is a serial port expansion product. I
6 think, again, we talked about it
7 specifically before.

8 Q. Does it have a POS application?

9 A. Yes. The usual POS application.

10 Q. And does this data sheet at pages 51 to 52
11 of Exhibit 27 show an applicable copyright
12 period?

13 A. Yes.

14 Q. Can you tell me what those dates are.

15 A. 2001 to 2006.

16 Q. And who would be the purchaser of this
17 product?

18 A. Primarily, a systems integrator.

19 Q. And who would be the ultimate market for
20 this product shown at pages 51 to 52 of
21 Exhibit 27?

22 A. The same markets we have been talking about,
23 including POS markets.

24 Q. Is this a stand-alone product?

25 A. No, it is not.

1 Q. Looking at page 53 of Exhibit 27, is this
2 also a solution that one gets referred to on
3 the web site by hitting a button on page 4
4 of Exhibit 27?

5 A. Yes.

6 Q. This relates to Create Interactive Kiosks
7 with Proximity Sensors?

8 A. Yes.

9 Q. And what is the recommended solution for
10 that application challenge?

11 A. A Watchport/P proximity sensor.

12 Q. Is there a data sheet for that product shown
13 at pages 55 to 58 of Exhibit 27?

14 A. Yes.

15 Q. Is that a stand-alone product?

16 A. No. It needs to couple into some system
17 that's going to take the sensor information.

18 Q. Is it external that needs to be applied to
19 another system?

20 A. Yes, it is external.

21 Q. And does this product shown at pages 55 to
22 58 of Exhibit 27 show an applicable
23 copyright period?

24 A. Yes.

25 Q. What is that period?

1 A. 2003 to 2006.

2 Q. What is the function of this Watchport
3 series product?

4 A. Well, the proximity sensor, specifically, is
5 to tell you if it -- if a person comes
6 within a certain range of the device.

7 So in the case of a kiosk
8 application, when a person wanders up to the
9 kiosks and the kiosk display would power on.

10 There are a series of Watchport
11 sensors, which the proximity sensor is one
12 of them. There is temperature, humidity, a
13 bunch of other ones.

14 Q. And does this product, which is at pages 55
15 to 58 of Exhibit 27, have a POS application?

16 A. Yes.

17 Q. What would those applications be?

18 A. Primarily, in a kiosk type -- an unstaffed
19 kiosk type application.

20 Q. Who would be the ultimate market for this
21 product?

22 A. Kiosks, so point-of-sale as it relates to
23 kiosks.

24 Q. Who would be the purchaser for this type of
25 product?

1 A. A kiosk integrator.

2 (Exhibit 28 marked for
3 identification.)

4 BY MR. BOYLE:

5 Q. Showing you what's been marked as Deposition
6 Exhibit 28, do you recognize what this
7 document is?

8 A. Yes. This is the Device Server Solution
9 Guide.

10 Q. This is something that's also on the Digi
11 web site?

12 A. Yes, it is.

13 Q. Is this the current version that's on the
14 web site?

15 A. To the best of my knowledge.

16 Q. Can you just generally tell us how this
17 document is used, or how -- when one goes to
18 the web site, how one uses the data
19 information that's shown in Exhibit 28?

20 A. The primary purpose is to give people kind
21 of uses for Digi Device Server products, how
22 our Device Server products could be applied
23 to customer applications.

24 Q. And if you turn to page 4 of Exhibit 28, is
25 there a specific reference to retail POS?

1 A. Yes.

2 Q. And then does Exhibit 28, then, in part
3 explain or describe some ways in which there
4 can be systems used for point-of-sale
5 operations?

6 A. Yes.

7 Q. Looking at Exhibit 28, can you identify for
8 me which products shown in this exhibit have
9 a POS application?

10 And there are page numbers,
11 apparently, at the bottom of each page.

12 A. Yes. So if you go to page 6, you have the
13 Digi One family, and the Digi One SP, the
14 Digi One RealPort, PortServer TS,
15 PortServer TS MEI family and
16 PortServer TS W MEI families all would be
17 applicable to point-of-sale.

18 Q. And are these all products we have already
19 looked at in the data sheets?

20 A. I don't think we have looked at the TS W. We
21 have looked at all the others.

22 Q. Everything but the wireless?

23 A. Yes.

24 Q. If you turn to the next page.

25 Do those have POS applications, on

1 page 7 of Exhibit 28?

2 A. Yes. The TS M Modem Series does and the
3 TS P would, also.

4 Q. Did we look at data sheets already for those
5 two products?

6 A. Well, not specifically. We looked at the TS
7 and TS MEI family.

8 Q. If you would turn to page 10 of Exhibit 28,
9 where it talks about the Digi One IA family.

10 A. Yes.

11 Q. Does that product have a POS application?

12 A. I mean, it could be used in POS type
13 environments, but it's really targeted
14 towards industrial type environments.

15 Q. And I think you described that earlier --

16 A. Yes.

17 Q. -- when you were talking about that in the
18 data sheet?

19 If you turn to the next page,
20 page 11 of Exhibit 28, there is reference to
21 the Digi Connect family, and I believe you
22 also already talked about those devices,
23 too?

24 A. Well, we haven't talked about the Digi
25 Connect family.

1 Q. Okay.

2 A. We talked about the Digi One EM, which was a
3 predecessor to the Digi Connect embedded
4 family of products.

5 Q. Does the Digi Connect family of products
6 have a POS application?

7 A. Yes. They can be. These are -- the Digi
8 Connect family, as shown on page 11, are
9 embedded products.

10 I think we talked a little bit
11 earlier about the notion of embedded
12 products, and when you take an embedded
13 module, incorporate it into -- an OEM would
14 incorporate it into another device that they
15 might build.

16 They might build products for the
17 point-of-sale market.

18 Q. And would these be the standard type of POS
19 applications you described earlier?

20 A. Yes. There might be others, as well. The
21 notion of an embedded product is it's -- you
22 know, they could use it for anything.

23 Q. And these Digi Connect family products are
24 ones that are currently marketed by Digi?

25 A. That's correct, yes.

1 Q. And if you go back to page 4, I asked you
2 about the reference to retail point-of-sale.

3 Do you recall that?

4 A. Yes.

5 Q. And if I followed your earlier testimony,
6 there is reference here to some other
7 things, like medical health care, security,
8 et cetera.

9 Some of these other items, also,
10 might involve a POS application; is that
11 right?

12 A. Yes, they could.

13 Q. If you would turn back to page 7 of
14 Exhibit 28, where we talked about the two
15 PortServers, are there additional functions
16 that those have that are related to POS?

17 A. So the PortServer TS P, the P stands for
18 power, so one of the reasons why we provide
19 the power offering, just like the USB Plus
20 products earlier, is that power is a problem
21 in POS applications.

22 When you are connecting devices,
23 you would like not to have to run separate
24 power cables to that device, so the TS P
25 supplies power over the serial ports.

1 The TS M has a modem into it,
2 inside, so it's used for remote
3 connectivity.

4 We talked about earlier some remote
5 connectivity applications using the modem.

6 So from a high level function
7 standpoint, they are the same -- the
8 PortServer TS products are all the same from
9 a functionality standpoint, they just -- we
10 have different flavors.

11 The P provides power, the M has a
12 modem, the H is hardened for industrial
13 temperature applications, so -- the W is
14 wireless, the MEI has multi-electrical type
15 of interfaces, so --

16 (Exhibit 29 marked for
17 identification.)

18 BY MR. BOYLE:

19 Q. Showing you what's been marked as Deposition
20 Exhibit 29, do you recognize this multi-page
21 document?

22 A. Yes, I do.

23 Q. And can you tell me what this is.

24 A. It is the Point-of-Sale Application Guide.

25 Q. Is this something that's on your web site or

1 is this in a printed form?

2 A. It's on the web site.

3 Q. So if someone went to the Digi web site and
4 was looking for point-of-sale applications,
5 one would find this on the web site?

6 A. Yes, they would.

7 Q. And can you just generally tell me what
8 Exhibit 29 does, how it provides helpful
9 information when one goes to the Digi web
10 site.

11 A. The goal of this Point-of-Sale Application
12 Guide is to, again, show different problems
13 or different types of point-of-sale or
14 retail problems, and then describe a
15 solution to that problem, using a Digi
16 product.

17 Before we went through the web site
18 where we talked about individual
19 applications and descriptions, and then
20 pointed to a Digi product.

21 The same -- it's sort of the same
22 type of thing, only all bundled up in one
23 document.

24 Q. Does it identify any products we have not
25 discussed?

1 A. No.

2 Q. If you kind of move through this, it has
3 listings on page 4, for instance, department
4 store chain, page 5, POS system
5 manufacturer, page 6, retail distribution
6 center, et cetera.

7 It's offering solutions to
8 different types of environments and
9 different types of application needs?

10 A. Correct.

11 Q. And in each case, it looks like, similar to
12 some documents we have seen already, it
13 shows a problem and then identifies a
14 particular product sold by Digi that would
15 solve that problem?

16 A. Yes, it does.

17 Q. And these products are products that we have
18 already discussed earlier; is that right?

19 A. Yes, we have.

20 Q. And as a result, what's offered in
21 Exhibit 29 for various solutions would
22 address different types of end users?

23 A. Yes. I mean, yes.

24 Q. Or the needs of different end users?

25 A. Yeah, the needs of different end users.

1 Q. When you look at Exhibit 29, it, basically,
2 refers to many of the same solutions or
3 applications you described earlier in terms
4 of retail stores, gas pumps, kiosks,
5 et cetera?

6 A. Yes, it does.

7 (A recess was taken and
8 Exhibit 30 marked for
9 identification.)

10 BY MR. BOYLE:

11 Q. Going back on the record, Mr. Young, showing
12 you a copy of Exhibit 30, do you recognize
13 this document?

14 A. Yeah. Exhibit 30 looks like, again, pages
15 off of the product section of the Digi web
16 site.

17 Q. And would this be the current version that
18 one would see if one went to the Digi web
19 site?

20 A. Yes.

21 Q. And it looks like the pages on Exhibit 30
22 identify different types of products like
23 you have described earlier in your
24 testimony?

25 A. Yes, that's correct.

1 Q. Are there any products or applications shown
2 in Exhibit 30 that you haven't discussed
3 already?

4 A. Well, there are a few products, but I think
5 most of them are extensions or a variance of
6 the ones that we have talked about before.

7 An example would be the Digi
8 Connect WAN family on page 1. We talked
9 about the ConnectPort WAN VPN product.

10 The ConnectPort is also a cellular
11 product. It has fewer ports than the
12 ConnectPort WAN, so the applications and all
13 that would be the same, it's just a
14 different variant of the same kind of
15 product.

16 It's also only a 2 and a half G
17 cellular instead of a 3G cellular.

18 So I believe that's true to the
19 other products, as well. The Digi -- yeah.

20 One on page 7, Remote Power
21 Manager, we didn't talk about the remote
22 power manager.

23 It gives you the ability to control
24 power remotely.

25 Q. Does that have a POS application?

1 A. It could. It's primarily targeted at data
2 centers, though.

3 And on page 10, there are some
4 synchronous products, also. Historically,
5 those were used in POS applications. You
6 won't find them used today. Most POS
7 applications don't use synchronous links
8 anymore.

9 And then on page 12, they have the
10 category of Embedded Modules, and
11 microprocessors.

12 We touched on embedded modules
13 earlier with the Digi One EM and then the
14 Digi Connect ME, the Digi Connect Y ME, the
15 Digi Connect EM and the Digi Connect Y EM.

16 There are a number of other
17 embedded modules that we didn't talk about,
18 like the Connect Core 9C and the 9P, which
19 would be similar to embedded -- these kinds
20 of embedded modules that I talked about
21 before.

22 Q. And those would have a POS application?

23 A. They could be used in POS products or other
24 products the same way -- the usual
25 applications that we talked about before.

1 And I think that's everything.

2 Q. So if I follow you right, Exhibit 30,
3 generally, covers products and applications
4 you talked about earlier, although there
5 might be a particular slight variation or
6 something that's described herein, like an
7 alternative application mode?

8 A. Yes, alternative products with different
9 port configurations.

10 Q. And can the products which are identified in
11 Exhibit 30 be used in POS applications?

12 A. Yes, the same kinds of applications that we
13 have talked about before.

14 Q. And would the markets and the potential uses
15 be the same?

16 A. Yes.

17 Q. And would the potential purchasers be the
18 same as you described earlier?

19 A. Yes.

20 (Exhibit 31 marked for
21 identification.)

22 BY MR. BOYLE:

23 Q. One last line of questions, Mr. Young.

24 A. Okay.

25 Q. As part of your responsibilities in your

1 positions at Digi, do you keep track of what
2 the competition is doing?

3 A. Yeah. Most -- I do sometimes on my own, or
4 sometimes if someone asks me to look at
5 something, or what my opinion is, then I
6 will dive in and maybe look at a product.

7 MR. ANISSIMOFF: I have a
8 preliminary objection.

9 Maybe, Marsha, you can help me. I
10 don't think you answered questions about who
11 Digi's competitors were. But I may be
12 wrong.

13 MS. STOLT: I think we objected
14 that their specific competitors were
15 confidential, and since we have never
16 entered into a confidentiality agreement, we
17 haven't disclosed specific competitors.

18 MR. ANISSIMOFF: So I am not aware
19 of any competitors, so if you could bear
20 that in mind.

21 MS. STOLT: And I think that's
22 true. Isn't that right, Joel? And if I am
23 wrong, we can determine that now, if you
24 don't consider that to be confidential
25 information.

1 THE WITNESS: So some competitors
2 are public because they have been talked
3 about in public, and some would be
4 confidential, so --

5 BY MR. BOYLE:

6 Q. Some give you authorization to disclose
7 their name, right?

8 A. Well, to the extent that we have disclosed
9 their name in public forums, like SEC
10 reporting and all that, then it's already
11 public.

12 I mean, it's not that they give us
13 permission, it's a public -- it's already
14 been made public, so yeah.

15 MS. STOLT: I think what John is
16 referring to is our conversation about some
17 customers having given you permission to
18 disclose names and others not?

19 THE WITNESS: A customer is
20 something we cannot have disclosed unless a
21 customer has given us permission.

22 Normally, in that case -- if a
23 customer gives us permission, we usually
24 have a press release associated with that
25 customer, if they give us permission.

1 BY MR. BOYLE:

2 Q. Do you have occasion to review literature or
3 data sheets from competitors regarding
4 competitive products?

5 A. Yes, when they are presented to me, I
6 usually give them a look over, offer my
7 opinions.

8 Q. And have you looked at some of the things
9 offered by competitors in the point-of-sale
10 market?

11 A. Yes.

12 Q. Based on your experience and your position
13 at Digi, who would you consider to be Digi's
14 competitors in the POS market?

15 A. Boy, that's interesting, because sometimes
16 we have people that are competitors and,
17 also, partners at the same time, right?

18 So, for instance, someone like NCR
19 might be a competitor to us, and, also,
20 might be a partner, because we actually
21 supply equipment to them, but yet we compete
22 with them in some of our zero-client sales.

23 You know, Dell Computer would be
24 another partner. We supply product to them,
25 but in the world of -- we actually compete

1 with them, also, because, again, we have a
2 zero-client, which is designed to replace a
3 Dell computer at a location.

4 Q. And with respect to what you just described,
5 you are referring to situations where Digi
6 sells to an original equipment manufacturer?

7 A. Yeah, that would be a good example.

8 Q. And then they sell the product under their
9 own brand name?

10 A. Yes.

11 Q. But with some component that's been built by
12 Digi?

13 A. Yes.

14 Q. Do you consider DigiPos to be a competitor
15 in the retail point-of-sale market with
16 Digi?

17 A. Yes, particularly in the zero-client space.

18 Q. And can you tell us again what you mean by
19 "zero-client space."

20 MR. ANISSIMOFF: Can I ask a
21 question? I don't think he answered that
22 question in the Interrogatory.

23 MS. STOLT: What was the question?

24 MR. ANISSIMOFF: Whether my client
25 was a competitor.

1 MS. STOLT: I don't recall. Was
2 there a specific question?

3 MR. ANISSIMOFF: Yeah.

4 Let me place this on the record.
5 Interrogatory number 49 says "State whether
6 the opposer considers the applicant to be a
7 competitor, and identify any documents where
8 the applicant is identified as such."

9 In the context of that question,
10 the opposer is the party opposing the
11 trademark here.

12 Answer to 49 says "Opposer objects
13 to this Interrogatory as irrelevant.
14 Likelihood of confusion is not limited to
15 directly competitive products."

16 So on that basis, with respect, I
17 would object to the question you pose, sir.

18 MS. STOLT: I think under our
19 ongoing responsibility to supplement our
20 Interrogatories, we could identify them as a
21 competitor and identify the documents that
22 we are entering as exhibits.

23 MR. ANISSIMOFF: I don't know what
24 the procedure is here, but if the procedure
25 includes a requirement to answer questions

1 notwithstanding an objection, then I think
2 we will have to do that.

3 Otherwise, I would like to object
4 to the question as posed for the reasons
5 that I have just given.

6 But I have no objection, if you
7 will warrant that the procedure permits the
8 question subject to somebody else deciding
9 the question of relevance.

10 MR. BOYLE: Right, that's exactly
11 the way it works.

12 MR. ANISSIMOFF: If you represent
13 that, I will accept that.

14 MR. BOYLE: Right, the objection
15 would be stated and then considered at the
16 time that someone takes an adjudicated view
17 of this matter so that the objection is
18 preserved.

19 And only in the case of
20 attorney-client privilege would one be
21 instructed not to answer.

22 So we would still have your answer,
23 but the objection is preserved.

24 MR. ANISSIMOFF: Please go ahead.

25 THE WITNESS: Okay. So we talked

1 earlier about the zero-client product line.
2 The idea is to place a computer type of
3 point-of-sale system.

4 And so to my knowledge, DigiPos
5 actually has point-of-sale type client
6 systems, which are special computers
7 configured for the point-of-sale
8 marketplace.

9 What I mean by "configured" is they
10 have a lot more ports, they are a little
11 more rugged for -- in a retail environment.

12 So Digi's Zero-Client product line
13 is designed to replace a conventional
14 computer style point-of-sale system by
15 putting in a zero-client.

16 BY MR. BOYLE:

17 Q. And would the zero-client products that Digi
18 sells, that you testified to earlier, be the
19 products of Digi that are in competition
20 with DigiPos?

21 A. Yes, the way I see it.

22 Q. And would those product lines by DigiPos and
23 Digi related to zero-clients be in direct
24 competition with one another?

25 A. Yes.

1 Q. Are you aware of any other competitors doing
2 business under a name that begins with the
3 Digi formative?

4 A. No.

5 Q. Are you aware of any other competitors doing
6 business under a name -- or excuse me, let
7 me rephrase.

8 MR. ANISSIMOFF: Object to the
9 questions because I don't know why this
10 witness would be qualified to answer that
11 question, as a VP of manufacturing and R&D.

12 And I am not sure of the relevance
13 of his answer.

14 BY MR. BOYLE:

15 Q. Okay. And again, you testified that part of
16 your responsibilities in your position are
17 to keep heads on what's going on in the
18 market?

19 A. Yes.

20 Q. And to know who your competitors are and
21 what they sell?

22 A. Yes.

23 Q. And are you aware of any other competitors
24 selling products that begin with a Digi
25 formative?

1 A. So no.

2 (A discussion was held off the
3 record.)

4 BY MR. BOYLE:

5 Q. Showing you what's been marked as Deposition
6 Exhibit 31, which contains 25 pages of a
7 variety of topics.

8 Do you recognize generally what
9 these documents are.

10 A. Yes. I mean, it's information about DigiPos
11 and DigiPos products taken from their web
12 site.

13 Q. And are these DigiPos --

14 MR. ANISSIMOFF: Again, I mean, how
15 can this witness give any evidence with
16 respect to these documents pulled off a web
17 site?

18 And maybe I haven't heard the
19 question yet, but --

20 MR. BOYLE: I will continue and --
21 obviously, if you want to keep objecting to
22 foundation, that's fine.

23 BY MR. BOYLE:

24 Q. Mr. Young, is this type of information on
25 competitors' products information that's

1 routinely kept by Digi?

2 A. Yes. We looked at -- yeah, we go over
3 people's web sites and compile data, yes.

4 MR. ANISSIMOFF: I will have to
5 object on the basis -- and I am sorry to be
6 objecting, but I believe that this question
7 was asked in an Interrogatory and was not
8 responded to.

9 I can't find it here right now,
10 with respect to documentation, documents,
11 products, whatever, in the hands of the
12 opponent having to do with our client,
13 DigiPos.

14 So that was refused.

15 MS. STOLT: I am not sure
16 specifically what you are referring to.

17 MR. ANISSIMOFF: I asked you on the
18 Interrogatory whether you had considered any
19 documents having to do with our client, and
20 you said no or refused to answer the
21 question.

22 MS. STOLT: But you can't identify
23 the specific Interrogatory at this point?

24 MR. ANISSIMOFF: I will be happy to
25 do so. It may take awhile, but I am pretty

1 sure we will find it.

2 MS. STOLT: But you are objecting
3 at this point?

4 MR. ANISSIMOFF: I am.

5 MR. BOYLE: Tell you what, why
6 don't we preserve the objection, proceed,
7 and if you -- later on, at a break or
8 something, if you find the Interrogatory
9 number, you can put that on the record.

10 MR. ANISSIMOFF: Sure.

11 BY MR. BOYLE:

12 Q. Okay. Going back on the record, Mr. Young,
13 I take it that you and others at Digi will
14 view the web sites of competitors to see
15 what they are doing in the marketplace?

16 A. Yes.

17 Q. And you do so to compare your products?

18 A. Yes.

19 Q. And to see how those products compare in
20 terms of competing in the marketplace?

21 A. Yes.

22 Q. If you will turn to page 13 of Exhibit 31,
23 do you recognize that document?

24 A. It's a case study of the DigiPos web site
25 about Circuit City.

1 Q. About a solution or application they
2 provided to Circuit City?

3 A. Yes.

4 MR. ANISSIMOFF: Where are we, 13?

5 MR. BOYLE: 13 of Exhibit 31.

6 BY MR. BOYLE:

7 Q. And page 13 of Exhibit 31 relates to a POS
8 application by DigiPos for Circuit City?

9 A. Yes.

10 Q. Does -- I know that you have some issues
11 about client confidentiality, but does Digi
12 provide services to customers similar to the
13 retail supplier of Circuit City?

14 A. Yes.

15 Q. And with respect to the case study described
16 on page 13 of Exhibit 31, does Digi provide
17 these types of solutions or applications to
18 its retail customers?

19 A. Yes.

20 Q. And does Digi sell similar products as
21 described here to its retail customers?

22 A. Yes.

23 MR. ANISSIMOFF: What similar
24 products, please?

25 THE WITNESS: We supply components

1 of similar products, so in case of a
2 point-of-sale, products of a point-of-sale
3 terminal.

4 So I gave an example earlier like
5 our zero-client solutions would be --

6 MR. ANISSIMOFF: But perhaps you
7 could just identify what products. The ones
8 we have talked about today or some other
9 products that --

10 THE WITNESS: The ones we have
11 talked about today, yes.

12 MR. ANISSIMOFF: Thank you.

13 BY MR. BOYLE:

14 Q. So, for instance, this article, which is at
15 page 13 of Exhibit 31, describes a
16 comprehensive POS solution that DigiPos did
17 for Circuit City?

18 A. Yes.

19 Q. And Digi would provide equipment, as you
20 described earlier, to provide the same type
21 of solutions to its retail customers?

22 A. Yes. Digi provides equipment that would go
23 into a solution, yes.

24 (Exhibit 32 marked for
25 identification.)

1 MR. ANISSIMOFF: I will object to
2 all the questions with respect to
3 Retail Blade because it's not relevant to
4 the subject proceedings, but based on our
5 understanding of how things proceed, please
6 go ahead.

7 BY MR. BOYLE:

8 Q. If I can just go back for a second, we were
9 talking about this case study on page 13 of
10 Exhibit 31 about a comprehensive solution
11 for Circuit City provided by DigiPos.

12 And I just want to follow up and
13 ask, you describe that Digi provides similar
14 solutions to its retail customers; is that
15 right?

16 A. Yes. Digi, we are not a complete solution
17 provider, so as we talked about earlier, we
18 provide components with integrators and
19 integrators often supply -- would supply a
20 complete solution.

21 So Digi hardware -- Digi products
22 would go into a complete solution.

23 Q. Which brings me to my next question: Would
24 Digi make these sales directly to its retail
25 customers or provide those through a

1 reseller?

2 A. We do it both ways, we sell directly to user
3 customers and we also provide it through
4 resellers.

5 Q. Showing you Deposition Exhibit 32 --

6 MR. ANISSIMOFF: The one I objected
7 to, right?

8 MR. BOYLE: Right.

9 BY MR. BOYLE:

10 Q. Do you recognize this document?

11 A. Yes. It's a PowerPoint style presentation.
12 I believe it comes off of the DigiPos web
13 site.

14 MR. ANISSIMOFF: Before we go
15 there, the previous exhibit was Exhibit 31.
16 You referred to, I guess, page 11 of it, or
17 13; I can't remember.

18 MR. BOYLE: 13, right.

19 MR. ANISSIMOFF: And my question
20 is, are you introducing all of these papers
21 on some basis or on what basis are you
22 introducing all of these documents? As they
23 came to him or --

24 MR. BOYLE: We are introducing them
25 that they are a collection of data or

1 information that Digi maintains on DigiPos.

2 And then I asked specific questions
3 about page 13.

4 MR. ANISSIMOFF: So that's the
5 answer, this is what they have on DigiPos in
6 their files?

7 MR. BOYLE: Right. It may not be
8 the exhaustive amount, but it's at least
9 what we have got here today.

10 MR. ANISSIMOFF: I always
11 appreciate the qualifications. There may be
12 more, of course.

13 BY MR. BOYLE:

14 Q. Have you viewed this web site for DigiPos
15 that describes Retail Blade that's
16 Exhibit 32?

17 A. Yes.

18 Q. And does Exhibit 32 contain products sold by
19 DigiPos that are competitive with products
20 of Digi?

21 A. Yes.

22 Q. Can you just tell us what type of products.

23 A. Well, the Retail Blade product is a -- there
24 is a set of products, some of which are
25 client -- point-of-sale client systems.

1 Okay?

2 So a computer that's provided at a
3 point-of-sale station.

4 The Digi -- as I talked about
5 earlier, the Digi Zero-Client, which -- the
6 ConnectPort Display, its objective is to
7 replace conventional computer-based
8 point-of-sale stations with a zero-client
9 solution, moving the software into the back
10 server room.

11 So, in fact, the zero-client, the
12 ConnectPort Display products, target the --
13 it's the exact same usage as some of the
14 Retail Blade products.

15 Q. And would those Retail Blade products sold
16 by DigiPos be in direct competition with the
17 products sold by Digi?

18 A. Yes.

19 Q. And with respect to Exhibit 32, which is
20 from the Retail Blade DigiPos web site, does
21 it bear the DigiPos logo or DigiPos emblem?

22 A. Yes.

23 MR. ANISSIMOFF: Well, I suppose we
24 could say the documents speak for
25 themselves.

1 MR. BOYLE: That's true.

2 MR. ANISSIMOFF: Being this witness
3 is exceptionally alert today.

4 MR. BOYLE: Why don't we take a
5 two-minute break, and we will just confirm
6 it, but I think I may be finished.

7 (A lunch recess was taken.)
8

9 EXAMINATION

10 BY MR. ANISSIMOFF:

11 Q. Good afternoon, Mr. Young.

12 I would like to talk to you about
13 your corporate structure at your company
14 very, very briefly.

15 The executive consists of who and
16 how many people, or how is your executive
17 divided?

18 A. So we have four -- as a public company, we
19 have four corporate reporting officers, and
20 that would be Joe Dunsmore, who is the CEO;
21 Subramanian Krishnan, who is the CFO. I am
22 the senior vice president, so -- and CTO; I
23 am one of them. And Larry Kraft, who is
24 responsible for sales and marketing, would
25 be the other reporting officer.

1 So we are the four reporting
2 officers.

3 And then underneath there we have a
4 number of other vice presidents. We have a
5 vice president for the Americas sales, we
6 have a vice president for European sales.

7 Q. I could maybe stop you there. But you are a
8 senior vice president?

9 A. Yes.

10 Q. And a member of that group of four you
11 mentioned?

12 A. Uh-huh, correct.

13 Q. And again, just to maybe delineate your
14 duties, I am sort of familiar with the VP
15 manufacturing, R&D manufacturing.

16 Can you just elaborate off of that
17 as to what you do.

18 A. Yes. I don't have any manufacturing
19 responsibilities, so -- I have all product
20 development responsibilities.

21 So any product that has to be
22 created, it's my team that helps design --
23 designs that product and builds it and hands
24 it off to our manufacturing or factories; we
25 have a number of different factories.

1 And as one of our four reporting
2 officers, I am also responsible -- let me go
3 back and finish the engineering piece.

4 So I have a staff of about 150
5 engineers scattered from Germany through --
6 to out in California that actually do the
7 engineering work. Okay? And I have a
8 management team that does that.

9 As a corporate reporting officer, I
10 am also one of the four responsible for
11 defining the overall corporate strategy.

12 Q. And product development, then, is under your
13 title, and so you work up the specification
14 for the product and then you go to the
15 manufacturing arms and have them prepare it,
16 do it for you, either in-house or out-house,
17 I guess?

18 A. Yeah, we have manufacturing both in-house
19 and out-house, yes.

20 Q. So how many employees, roughly, do you have
21 in all of your manifestations, affiliates,
22 in Germany --

23 A. Digi overall?

24 Q. Yes.

25 A. About 550, plus or minus some; in that

1 range.

2 Q. So you are a fairly large company?

3 A. 550. I don't know whether that's large or
4 small.

5 Q. Are you a leader in any particular field?

6 I don't mean to be facetious in any
7 particular sense, but do you consider
8 yourself, your company, to be a leader in
9 any field, product field?

10 A. Well, we like to say we are a leader in
11 device connectivity.

12 Q. I will return to that.

13 And in terms of the trademark, the
14 Digi trademark, because this is about the
15 Digi trademark, I noticed you are wearing
16 the Digi trademark, and what I see there is
17 the word "Digi" and the background is a -- I
18 guess a square, a green square.

19 Is that how you use the trademark?
20 Is that how your company uses the trademark
21 in that design form?

22 A. This is one of the ways, yeah. I think we
23 also just write out the words "Digi"
24 and "Digi International," as well, yeah.

25 Q. So you would say that you use that mark

1 interchangeably with just writing out
2 D-I-G-I, without any background whatsoever?

3 A. We do it both ways, yes.

4 Q. Do you have a corporate manual or anything
5 that describes trademark use at your
6 company?

7 A. Yes, I believe there is one.

8 MR. ANISSIMOFF: I don't know
9 whether I am permitted to ask for its
10 production, but I will ask for the
11 production of the corporate manual for the
12 use of the trademark.

13 BY MR. ANISSIMOFF:

14 Q. In terms of being a leader in the
15 connectivity business, what is connectivity?
16 And you talked about it briefly this
17 morning.

18 And the way I would understand,
19 generally, what you said, was that you sell
20 a series of equipment that allows people to
21 connect up to computers from peripheral
22 devices.

23 Why don't you take a stab at it.

24 A. Okay. Yeah, so the way I describe our
25 connectivity business is connect devices to

1 other devices or back to computers across
2 any sort of network medium.

3 Our goal is to be -- to provide the
4 complete set of networking medium, so
5 whether it's ethernet, wi-fi, cellular,
6 serial, USB, what have you.

7 And the only other place I would
8 clarify is that we tend to talk about device
9 connectivity, and when we define a "device"
10 we mean not cell phones and not PDAs.

11 Q. I saw a picture of a PDA in one of the
12 documents. But not PDAs?

13 A. Yeah. We are not trying to provide
14 mechanisms for connecting PDAs.

15 Now, PDA might connect to other
16 applications which connect other devices,
17 but --

18 Q. But in either case, do you manufacture the
19 computer?

20 A. What kind of computer? You mean like a
21 personal computer or --

22 Q. No, I want to sort of hone in on what the
23 company manufactures and makes and sells.

24 And as I understand it, they do
25 connectivity devices, and we will review

1 things briefly, but that's what you
2 manufacture?

3 A. We make connectivity-making equipment. But
4 those -- all of them have, effectively,
5 computers inside them. They are all
6 embedded computers.

7 So I am struggling with the term
8 "computer," so --

9 Q. No, I understand, and that's because of your
10 great expertise in the field.

11 But I think for these purposes, we
12 need to distinguish between some terms, and
13 why don't we just talk about peripheral
14 devices.

15 So can we have an exhaustive list
16 of peripheral devices which can be connected
17 with your equipment?

18 A. An exhaustive list?

19 Q. Let's maybe start a list.

20 Scanners?

21 A. Yes.

22 Q. Printers?

23 A. Yes.

24 Q. Card readers?

25 A. Yes.

1 Q. Virtually any device whatsoever?

2 A. Yes.

3 Q. Do you manufacture any of these peripheral
4 devices?

5 A. Yes. We manufacture sensors; the sensors
6 would be a device.

7 We manufacture cameras; so cameras
8 would be another device.

9 Q. Do you manufacture any other devices, other
10 than sensors and cameras?

11 A. No, none of the ones that we discussed.

12 Q. And in terms of sensors, are you referring
13 to humidity sensors or distance sensors?

14 What kind of sensors?

15 A. Proximity sensors, an accelerometer,
16 temperature, temperature and humidity, water
17 sensors.

18 That could be it. There may be
19 another one, but --

20 Q. None of these sensors are used in
21 point-of-sale applications?

22 A. They tend to be used in kiosks. So to the
23 extent that a kiosk is in a point-of-sale
24 application, yes, they would be.

25 Q. But realistically -- I am having trouble

1 with you suggesting that a humidity sensor
2 somehow can be used in a point-of-sale
3 application, but perhaps you can explain.

4 A. Well, I don't know about the humidity
5 sensor, but our distance and proximity
6 sensors are readily used in point-of-sale
7 kiosks to know when a person comes up.

8 An accelerometer would determine if
9 the kiosk has been tilted, so if someone is
10 coming to steal it, whether it's been tilted
11 or moved.

12 Q. So in terms of peripheral equipment that may
13 be used for point-of-sale systems, a
14 distance-measuring device would be one that
15 you manufacture.

16 A. Yes, it would be one.

17 Q. And no other?

18 A. Cameras.

19 Q. And how is a camera used for a point-of-sale
20 system?

21 A. Cameras are used, one, to detect theft; two,
22 to detect an individual, to I.D. an
23 individual.

24 Again, in a kiosk environment -- we
25 used the example of a gas pump, again, a

1 camera to detect drive-offs.

2 Q. In terms of cameras, did we review in any
3 sense any product sheet for cameras today?

4 A. Yeah, the Watchport --

5 Q. The Watchport system, and the sensors?

6 A. Yeah, the Watchport sensors.

7 Q. I think the cameras and the sensors are all
8 pertinent to the Watchport product?

9 A. Yeah, they are all under the Watchport name,
10 yes.

11 Q. Yeah. And apart from the Watchport name or
12 category of products, you don't manufacture
13 and sell any other peripheral devices, other
14 than the ones we have discussed here just
15 now?

16 A. That is correct.

17 Q. And connectivity means connecting a device
18 to what?

19 A. To another device or to a computer or a host
20 application.

21 Q. I think you used the term "computer" in the
22 sense that I would use it, not in your
23 refined sense, but for something that's
24 understood to be a computer, a box, that
25 people like me call a computer?

1 A. Yes. However, we might use -- we actually
2 do use our connectivity vehicles to connect
3 to our Digi products. So --

4 Q. What other Digi products?

5 A. Our other connectivity products.

6 Q. So connect one connectivity device to other
7 connectivity device?

8 A. Yes, so it is an enabler of connecting one
9 device to another.

10 Q. But in the context of this case, can we not
11 agree that what you sell, these connectivity
12 devices, are not called computers in the
13 marketplace?

14 A. Well, they are called embedded computers and
15 we have a line of single-board computers, so
16 we do use the term "computer."

17 Q. I see.

18 Now, do you sell computers as I
19 would understand that term, the stuff that
20 if I get a brochure from Dell or something,
21 I understand Dell to sell computers.

22 Do you sell those kinds of
23 computers?

24 A. We do not sell a computer that comes with a
25 disk drive and a CD-Rom, that kind of

1 computer, no.

2 Q. So we are back to connectivity devices.

3 And these devices, what they do,
4 just to summarize, if I understood you, they
5 connect some sort of peripheral device,
6 which you don't manufacture, other than the
7 sensor and the camera we talked about, to a
8 computer that you don't manufacture, and
9 they also connect to each other?

10 A. Yes. Now, the part that I think we need to
11 clarify is, all of our -- I shouldn't say
12 "all."

13 A number of our devices are
14 programmable. We talked a little bit
15 earlier about the ConnectPort Display
16 product.

17 So by virtue that it's
18 programmable, someone -- and I will define
19 someone as being an integrator, perhaps, or
20 an OEM -- could program that, put an
21 application on it, put custom logic, and so
22 we could execute software instructions and
23 create an application.

24 And so that's not a computer, the
25 way we describe a personal computer, with,

1 you know, a disk drive and a CD-Rom.

2 Program storage is on a flash
3 memory. Inside it's an embedded system, and
4 an embedded system is popular because they
5 don't tend to require the maintenance of
6 things with lots of moving parts, like disk
7 drives, but nonetheless, you can program it;
8 it can be programmed to run a software
9 application.

10 Q. So the other thing about your connectivity
11 devices is that they are programmable?

12 A. Uh-huh.

13 Q. And they would be -- you could program them,
14 an integrator could.

15 And could you describe the relative
16 skill level of an integrator.

17 A. Windows level programmer, JAVA programmer.

18 Q. So programming, he has to have programming
19 credentials?

20 A. Would have to, yeah, know programming
21 language.

22 Q. Be somewhat computer literate?

23 A. Yeah, equivalent of programming a personal
24 computer, that level of skill.

25 Q. And then the OEM manufacturers, I suppose

1 they have a full range of technical
2 expertise that they can resort to?

3 A. Yeah. A typical OEM might be -- might have
4 a much deeper knowledge of an embedded
5 system, right, all the way up to the same
6 level of skills that I just talked about.

7 Q. What about be the level of expertise, in
8 your view, that an OEM person would need to
9 have to program and integrate your
10 connectivity device in some sort of system?

11 A. I mean, the same level of expertise that the
12 integrator would have to have.

13 Q. Would a consumer have that level of
14 expertise?

15 A. Depends on the consumer.

16 Q. I suppose if the consumer is one of those
17 integrators you spoke about, he could do it
18 himself, right?

19 A. Yeah.

20 Q. But typically, again, would you expect the
21 department store to have that kind of
22 expertise, to program your connectivity
23 devices?

24 A. What kind of department store?

25 Q. Well, you seem to quibble with me around the

1 edges. Why can't we simply accept, for the
2 purposes of this examination -- and you
3 don't have to if you don't want to -- that
4 you make connectivity devices which connect
5 peripheral device, generally speaking, to a
6 computer?

7 Do you accept that?

8 MR. BOYLE: I am just going to
9 object on the grounds that it's
10 argumentative, and I think mischaracterizes
11 the testimony, but go ahead.

12 THE WITNESS: Well, I mean, I think
13 moments ago I took -- walked through your
14 statement and clarified, so -- do you want
15 me to keep doing that?

16 BY MR. ANISSIMOFF:

17 Q. No, I don't think we should keep doing that.
18 And if that's what I am doing, I apologize
19 to you.

20 I am trying to understand these
21 things from an ordinary commercial point of
22 view.

23 So why don't we just take -- go to
24 the first set of exhibits, please, if you
25 could just put them in front of you.

1 Let's look at Exhibit 2. Apart
2 from that being a Rapidport/4, what is the
3 technical or commercial designation of that
4 device?

5 A. I am not sure I understand your question.

6 Q. Well, what is that? Rapidport/4 is a trade
7 designation that you have given to that
8 piece of equipment.

9 A. Okay.

10 Q. What is that piece of equipment?

11 A. So it's an ethernet -- I mean a USB-to-modem
12 box.

13 Q. And what does a USB-to-modem box do?

14 A. Allows you to connect to a computer via a
15 modem, telephone modem.

16 Q. Connect what to a telephone via modem? Just
17 give an example. Printer?

18 A. Could be a printer, or it could be a
19 terminal, for that matter.

20 Q. Could it be virtually any serial device?

21 A. In this case, since it's a modem, it would
22 have to be a serial device with a modem.

23 Q. So you can connect virtually anything, any
24 peripheral device?

25 A. Yeah.

1 Q. To a computer? To a computer?

2 A. Specifically, this would be to a personal
3 computer or server, a thin client.

4 Q. Exhibit 3, and apart from the trademark,
5 that you call it, I think it's the
6 AccelePort Xe, what is that?

7 It looks like a circuit board to
8 me, but what is that that we are looking at?

9 A. It's a card that plugs into -- onto, in this
10 case, it looks like, an ISA bus for giving a
11 computer a large number or an increase in
12 the number of serial ports.

13 Q. And again --

14 A. This is the original Digi board business,
15 serial port expansion. So I have a
16 server -- server, computer, client,
17 computer, plug the board in, more serial
18 ports.

19 Q. So this increases the number of serial ports
20 on a computer to enable other devices to be
21 plugged into those serial ports?

22 A. Correct.

23 Q. And the connection that we make is --
24 perhaps we could coin another phrase, if you
25 will permit me.

1 It's for the usual reason of
2 connecting a peripheral device to a
3 computer?

4 A. The reason why we would plug in a card like
5 this?

6 Q. Is to enable that connection to take place?

7 A. Yes.

8 Q. Exhibit 4, is the purpose of this product
9 the same as the one we just discussed for
10 Exhibit 3?

11 A. Yes.

12 Q. And you can decline to answer if you wish,
13 but what's the trick to a connectivity
14 device, if there is one?

15 I mean, are we changing language?
16 Is there something going on?

17 I mean, it's more than just an
18 extension cord.

19 Is there some computer steps being
20 taken to enable the mating of the peripheral
21 device to the computer, or what are these
22 specifications all about?

23 A. Okay. I really wouldn't call it a trick,
24 but, I mean, these are all embedded systems,
25 processor systems, so they all have CPUs and

1 memory and programs that execute.

2 And so they are -- convert timing,
3 they convert language, if you want to use
4 the term "language," that one -- to a
5 different language, whether that be
6 formatting or protocol, as well as how
7 often, how often -- whether it needs to be
8 polled or not, whether or not there needs to
9 be any rules, other rules, for how that
10 device needs to be spoken to, whether there
11 is any special logic that should be -- like
12 if this device happens -- talks, what should
13 I do? Should I tell somebody about it or
14 not?

15 Q. All of those things --

16 A. Translation, yeah.

17 Q. And I realize I am cutting you off, but all
18 of those things to enable the peripheral
19 piece of equipment to communicate to the
20 computer, and vice versa?

21 A. Yeah. In the desired manner. So if the
22 computer only wants to hear about every
23 third message, then every third message is
24 what is heard about. If it wants to -- if
25 it wants a translation done, then a

1 translation would be done.

2 Q. But in the simple case, in the case of a
3 printer, for example, this product that we
4 were just talking about at Exhibit 4 would,
5 basically, enable a printer to communicate
6 with a computer, and vice versa?

7 A. Yeah. The one thing I would clarify is you
8 use the term "simple case," and part of what
9 our business is is the fact that that stuff
10 isn't simple case.

11 And that's why we are here, because
12 it's not -- it tends not to be simple.

13 Q. No, perhaps I shouldn't have used the
14 adjective "simple," and I think neither can
15 this be so complex that you don't understand
16 it.

17 But again, in the case of a
18 printer, we are talking about connecting a
19 printer to a computer via your device?

20 A. Yeah, so -- but you have to translate the
21 language of the printer.

22 Q. What's not so simple as building it; is that
23 what you are saying?

24 A. You have to know -- you might have to
25 translate the language of the printer. And

1 there are lots of printers.

2 Q. Broadly speaking -- and I apologize, I have
3 a habit of cutting you off, and I do
4 apologize for that.

5 Now, how many people -- we talked
6 about competitors at the end of your
7 examination in chief.

8 How many competitors, numerically,
9 do you understand you have in the
10 connectivity business in the United States?

11 A. I don't know. It varies widely because our
12 competitors in, say, different vertical
13 markets, and so I can't give you a number.

14 Q. But you are a senior executive of the
15 opponent, and I realize that you can't
16 answer exactly because the question is too
17 vague.

18 However, can you give me some idea
19 about how many competitors you have? Is it
20 more than 5 or more than 10?

21 Or how many people are roughly in
22 this business in the United States?

23 A. I can't say that I have ever counted the
24 list, so --

25 Q. Would you care to take a guess?

1 A. No.

2 Q. Educated guess?

3 Can you name me at least three
4 right now?

5 A. Lantronix would be one, Comptrol would be
6 another.

7 Q. And the third one, just for the record?

8 A. And I will pull Airlink.

9 Q. Thank you.

10 If we could move to Exhibit 5.
11 Again, I am asking what this product is. I
12 realize it's called the EtherLite.

13 But what is it? It's a box, sure,
14 but what kind of a box is it?

15 If somebody were to put this in his
16 catalog, what would they call this?

17 A. They could call it by many names. They
18 could call it a serial server or a terminal
19 server.

20 Q. So that would be a commercial designation
21 for it?

22 A. Yeah, or a common term, yeah.

23 Q. What do we call it? What do you call it?
24 Sorry.

25 A. You call it an EtherLite.

1 Q. But that's the trade name designation.

2 Do you have its commercial
3 designation anywhere, looking at either
4 page 1 or 2?

5 A. Yeah, actually -- no, we try to --

6 Q. Network serial concentrator? Does that
7 help?

8 A. You could use that, too, I guess.

9 Q. I am just saying, you use it.

10 A. What we try to do is let consumers search on
11 a variety of terms but come to our products
12 and see them as products and not necessarily
13 off-the-shelf pieces that they would just
14 wander around and find another product just
15 like it.

16 Q. Fair enough. I appreciate that
17 enlightenment.

18 But specifically, another name for
19 this product would be a network serial
20 concentrator?

21 A. Yeah.

22 Q. As you have designated it here.

23 And looking at Exhibit 6, what
24 would we call that in terms of its
25 commercial designation?

1 A. How about a Device Server?

2 Q. And Exhibit 7 is, in the same spirit and in
3 the same context?

4 A. An embedded Device Server.

5 Q. Exhibit 8?

6 A. A Device Server.

7 Q. And Exhibit 9?

8 A. A Device Server.

9 Q. And is there a meaning that we could ascribe
10 to a Device Server?

11 Putting those two words together,
12 what does that connote to someone in the
13 business or in the trade?

14 A. Well, so --

15 Q. What does a Device Server do?

16 A. If you are familiar with the term of like a
17 client server, right, so you have your
18 server, in that context, and a device, so
19 it's a vehicle that enables the connection
20 of a device and acts as a server for that
21 device.

22 Q. Thank you.

23 Exhibit 10, please.

24 A. A Device Server.

25 Q. Exhibit 11?

1 A. A Device Server.

2 Q. Exhibit 12?

3 A. A console management server.

4 Q. Could you explain what "console management"
5 means.

6 A. As you see here in the diagram, a data
7 center will, as I discussed earlier, often
8 have a number of servers, a server in the
9 context we talk about a central server in a
10 business, right, so you might have several.
11 They might be web servers, whatever.

12 And you need a vehicle to manage
13 these servers so that you can keep track of
14 if they need to be rebooted, if one is in a
15 panic state.

16 And so the notion of a console
17 server actually -- a console management
18 server actually is a vehicle for managing
19 your server farm in a data center.

20 Q. Thank you.

21 Exhibit 13?

22 A. It's a multi-port serial card.

23 Q. And is it fair to say that we have discussed
24 the function of a serial card earlier?

25 A. I think we have.

1 Q. Thank you.

2 Exhibit 14?

3 A. It would be a Device Server.

4 Q. 15?

5 A. Device Server.

6 Q. 16?

7 A. Terminal server.

8 Q. And is that a little different than console
9 server?

10 A. Yes. A terminal server is used for,
11 oftentimes, connecting terminals. A
12 terminal could be a thin client, it could be
13 a -- all the way down to a dumb terminal,
14 and associated devices or peripherals that
15 might be associated with that terminal.

16 So whereas a console server is
17 connected to a server to manage a server, a
18 terminal server, while you could use it for
19 that, it's more targeted for individual
20 devices.

21 So like you see here in the
22 picture --

23 Q. Looking at the picture, there is a whole
24 bunch of devices connected to the server?

25 A. Uh-huh.

1 Q. And then the red line above the blue line,
2 the blue lines being the connections, is
3 what, your wireless connection to the back
4 office; is that right?

5 A. Actually, the red line is an ethernet LAN,
6 so that's actually wired, so that would be
7 an ethernet, and the blue would be probably
8 a serial connection. But --

9 Q. And you can also have them wireless?

10 A. You could also have them wireless.

11 So the difference here is that the
12 console server was tied to a rack of server
13 computers here. These are tied to, as you
14 can see, the devices here on this page.

15 Q. Yes, and we can take a look at those
16 devices, specifically, and get that out of
17 the way.

18 A magnetic key coder, a cash
19 register, a receipt printer, a credit card
20 swipe, a magnetic key coder, a cash
21 register, another credit card swipe, and the
22 one on the left I don't know, receipt
23 printer.

24 Is that fair?

25 A. Yes.

1 Q. And that's what the words say, a hotel front
2 desk?

3 A. Right.

4 Q. So the hotel, again, in a hypothetical
5 case -- and, again, please feel free to
6 correct me.

7 The hotel or the person doing the
8 stuff for a hotel, like Marriott, for
9 example, would buy all of these peripherals
10 wherever, the ones we just discussed, and
11 use your server to connect them all to the
12 back office?

13 A. Yes. That's this example.

14 Q. Thank you.

15 18?

16 A. These are device servers.

17 Q. 19?

18 A. This is a terminal server.

19 Q. 20?

20 A. A multi-port --

21 MR. BOYLE: Hang on a minute. I
22 think you skipped 17, is what happened.

23 MR. ANISSIMOFF: I skipped 17.
24 Madam Reporter, I skipped Exhibit 17.

25 THE WITNESS: Okay. So 17 is the

1 Device Server.

2 BY MR. ANISSIMOFF:

3 Q. And if we could reload at 17.

4 A. Okay.

5 Q. 18 is --

6 A. 18 is a terminal server.

7 Q. And 19?

8 A. Would be a multi-port serial card.

9 Q. 20?

10 A. A multi-port serial card.

11 Q. 21?

12 A. Very similar to a multi-port serial card.

13 Well, there is a box that goes with it,

14 but --

15 Q. No, I will let you have that.

16 22?

17 A. Similar to a multi-port serial card.

18 Q. 23?

19 A. A multi-modem adapter, or integrated modem
20 adapter.

21 Q. And the idea here is, if you can very
22 briefly explain.

23 A. So this is a card that has a large number of
24 modems on it.

25 Q. I see. Okay.

1 A. And so you dial into it as a remote access
2 server.

3 Q. Almost like a switchboard?

4 Well, strike that.

5 A. Yeah.

6 Q. 24?

7 A. Multi-port serial card.

8 Q. 25?

9 A. Boy, there is no common name, because this
10 is the only one in the industry. So there
11 is no common name.

12 Q. What do you call it, apart from AnywhereUSB?

13 A. Yeah, USB over IP.

14 Q. What is the function of this unit, technical
15 function?

16 A. It allows you to take USB devices and put
17 them on a network.

18 So think of it as a terminal server
19 with USB ports, similarly.

20 That's kind of a loose version, but
21 the best way I can describe it.

22 Q. With this particular product, it's one of a
23 kind, and I notice some of the trademark
24 designations are AnywhereUSB; is that fair?

25 A. Yeah. I don't know if there is a trademark

1 on AnywhereUSB or not.

2 Q. Are you aware of any intention to use that
3 as a trademark or not?

4 A. I don't know.

5 Q. Underneath it says "Remote USB
6 concentrator."

7 Can you explain that term, or have
8 you?

9 A. I think I have.

10 Q. Perfect.

11 And then inside out network, that
12 trademark designation, is that something you
13 are aware of?

14 Are you using that for some
15 purpose?

16 A. That used to be the way we designated the
17 brand of our USB products.

18 Q. With that designation, eh?

19 A. Uh-huh.

20 Q. And specifically just looking at this
21 product, to your knowledge, sir, it doesn't
22 appear anywhere with any reference to "Digi"
23 anywhere on it, other than the piece of
24 paper we are looking at here?

25 A. Well, I think that this is an old picture.

1 I don't know where we are in the status, but
2 all -- anything labeled Inside Out Networks
3 is -- is Digi today or has Digi logos on it,
4 or if it doesn't, it would soon.

5 Q. So this has been rebranded?

6 A. Yeah. All products are being rebranded as
7 Digi, or have been rebranded as Digi.

8 Q. And as shown here today, right?

9 A. Should be.

10 MR. ANISSIMOFF: Marsha can help,
11 but I am not aware of any other branding of
12 these products other than what I have seen
13 here today.

14 MS. STOLT: Inside Out Networks was
15 a company that was acquired by Digi many
16 years ago, and all of the products were
17 co-branded.

18 They were in the Digi catalog, they
19 are on the Digi web site. They were often
20 shipped with Digi marks on the packaging.
21 The data sheets have the Digi brand on them.

22 So there was co-branding of these
23 products. As I understand it, it's now
24 moved, more toward being sold with just the
25 Digi brand showing on it.

1 MR. ANISSIMOFF: Thank you.

2 In terms of me being able to
3 appreciate what those graphics look like,
4 you have produced today those graphics?

5 MS. STOLT: That's one example of
6 what the graphic would look like, with both
7 the Inside Out Networks brand and the Digi
8 brand shown on the data sheets.

9 MR. ANISSIMOFF: I am just
10 wondering, there isn't a whole set of other
11 documents that would show a different use of
12 the trademark?

13 MS. STOLT: You may find that in
14 some of the older product catalogs and we
15 would have to revisit that.

16 MR. ANISSIMOFF: But on the newer
17 side, it's what we see here today?

18 MS. STOLT: On the newer side, the
19 Digi logo is being used on almost
20 everything.

21 MR. ANISSIMOFF: But the only thing
22 I am asking, as shown on this documentation,
23 like, for example, let's go to Exhibit 22,
24 and I will just hand you mine.

25 That is an example of what you were

1 saying?

2 MS. STOLT: That's one example,
3 yes.

4 MR. ANISSIMOFF: It's obviously the
5 particular example.

6 MS. STOLT: For this product, yes.

7 MR. ANISSIMOFF: All I am asking,
8 is, to the extent we are looking at other
9 examples, those would be the graphics?

10 If we looked at Exhibit 21, that
11 would be that example?

12 MR. BOYLE: I think the confusion
13 is, these are historical shots that may have
14 changed, and they are not the current form.

15 MR. ANISSIMOFF: Let's go off the
16 record for a bit.

17 (A discussion was held off the
18 record.)

19 MR. ANISSIMOFF: For the record,
20 counsel for the opponent has clarified that
21 these are historical documents, and so all
22 of the questioning with respect to the use
23 of the trademark has been somewhat
24 misguided.

25 Thank you for the correction.

1 BY MR. ANISSIMOFF: .

2 Q. If we could go to Exhibit 27, please.

3 And just looking at page 1 of
4 Exhibit 25 --

5 A. Sorry, 25 or 27? I have this Exhibit 27.
6 Sorry.

7 Q. Yes.

8 A. Yes.

9 Q. Page 1 of Exhibit 27.

10 A. Okay.

11 Q. So in keeping with what you and I were just
12 discussing about with respect to your
13 product line, on page 1, is it fair to say
14 that those are your products, the commercial
15 products that you sell, in that column,
16 generally speaking?

17 A. Which column are you speaking of?

18 Q. Cellular gateways, wi-fi device servers,
19 video sensors, zero-clients?

20 A. Yeah. Actually, the way I would describe it
21 would be, these are product areas that we
22 have been designated to make it helpful to
23 customers.

24 You will see -- might find some
25 overlap. For instance, one product, a wi-fi

1 device server might also show up in a serial
2 server because we try to create terms that
3 might be meaningful.

4 Q. Just so that I can understand that in the
5 commercial sense, preceding the sentence
6 says "Which Digi products are right for
7 you?"

8 So, for example, if I was after
9 console servers, we would go there, and you
10 would have your range of console servers
11 there in that category; is that correct?

12 A. Yes.

13 Another example, though, would be
14 in embedded solutions there are wi-fi device
15 servers, also, so some people might think of
16 a wi-fi device server as a wi-fi Device
17 Server. They might also be looking for it
18 in embedded.

19 So it's meant to be a tool for
20 customers. So if they know they want wi-fi,
21 they will go there. If they know they want
22 embedded, they might go someplace else.

23 So there is some overlap.

24 Q. Sure. And, again, why anybody would be
25 looking at this is because he wants to make

1 that connection in the sense we have been
2 discussing all day today, correct?

3 A. Correct.

4 Q. If we go to page 3, to understand this
5 page -- and counsel went through it in some
6 detail -- there is either a problem or
7 objective or an application indicated in
8 each case, such as, for example, "Reconnect
9 during network outages."

10 And the solution you propose is for
11 the person to purchase the ConnectPort WAN
12 VPN.

13 Is that the way I am to understand
14 that?

15 A. Yes.

16 Q. So in each case where there is a solution
17 suggested, it refers to a specific product
18 that you manufacture?

19 A. Yeah. A specific product that we
20 manufacture that would be included in the
21 solution.

22 You may need to buy some other
23 things. An integrator may need to put some
24 other pieces together for the solution.

25 Q. Precisely, but they couldn't be able to buy

1 those things from you?

2 A. Yeah, depends.

3 Q. It doesn't depend. I don't think you sell
4 those other things.

5 A. Well, in the case of sensors, I think one of
6 the sensor applications --

7 Q. We went over the sensors, I agree, and the
8 cameras.

9 A. Okay.

10 Q. Fair enough, you --

11 A. Sure.

12 Q. So other than the sensor and other than the
13 camera, none of those peripheral items
14 referred to anywhere could be purchased from
15 you?

16 A. That's correct.

17 Q. If I could ask you to please go to
18 Exhibit 28.

19 And we have your evidence in chief,
20 and if we can go to page 3 of that document.

21 So on page 3, in the left-hand
22 column, we have the working definition of a
23 Device Server.

24 Do you see it there?

25 A. Yes. You mean where it says "Device Server:

1 What is it Anyway?"

2 Q. Yes. So what we have is a reference to
3 those products that we see on the front
4 page. They are all device servers, correct?

5 A. Yes.

6 Q. And in terms of connecting to your device
7 servers, for example, they can be connected
8 to anything, as we discussed, but you are
9 identifying certain areas of manufacture.

10 And the first one you identify is
11 industrial automation.

12 Do you see that, on the second
13 column?

14 A. I see industrial automation, yes.

15 Q. So if I am -- understand this, I can use
16 your Device Server to attach essential
17 devices, such as PLCs.

18 Can you tell me what a PLC is.

19 A. Programmable logic controller.

20 Q. CNC/DNC, is that like lathes?

21 A. Yes. Machining tools, yes.

22 Q. Next thing we could attach is process and
23 quality control equipment.

24 Can you give me some examples of
25 that?

1 A. A pump, remote sensors, flow meters. You
2 know, process control tends to relate to the
3 flow of fluids and gases and things, so --

4 Q. Okay. And in keeping with what's described
5 there, pump controllers, bar code readers
6 and scanners, operator displays, that would
7 be a monitor, right?

8 A. Yes.

9 Q. "Scales and weighing stations, printers,
10 machine vision systems, and many other type
11 of manufacturing equipment is common."

12 Is that correct? You could attach
13 all of that?

14 A. Yes.

15 Q. And that's in the industrial automation
16 area.

17 And without going through all that
18 again, you also suggest that in the medical
19 health care field, a range of devices may be
20 connected to the computer with your device
21 servers that are used in the medical health
22 care field, right?

23 A. Yes.

24 Q. And similarly, for retail point-of-sale?

25 A. Yes.

1 Q. And similarly, for building
2 automation/security?

3 A. Yes.

4 Q. Traffic management and console management?

5 A. Okay.

6 Q. This strikes me as a pretty exhaustive list
7 of applications. Yes?

8 A. It's a long list, yeah.

9 Q. I think -- I mean, if you feel it's fair to
10 say no to my question about exhaustive list,
11 fine.

12 This is a fairly lengthy list; is
13 it not?

14 A. Yes.

15 Q. And no one thing in this list takes priority
16 over anything else; would that be fair?

17 A. I mean, these are -- I am not sure what you
18 mean by "priority."

19 What we try to do -- this is
20 usually a piece of marketing literature, so
21 you want to make it easy for customers to
22 see how they can use products.

23 So these are -- would I want to
24 have a medical customer take priority over
25 an industrial automation customer? I don't

1 know what that means.

2 Q. No, I think I said that there is no
3 priority.

4 A. But as a piece of literature, it's a generic
5 piece of literature, yes.

6 I guess maybe I am not quite
7 understanding your question.

8 Q. We have established, for the purposes of
9 this discussion and your testimony, that
10 this is a fairly comprehensive or lengthy
11 list of applications?

12 A. Yes.

13 Q. And what they have in common, each of them,
14 is the connection of devices via your device
15 servers to a computer?

16 A. Yes.

17 Q. So your Device Server is not industrial
18 automation-specific, it can be used for
19 medical health care applications?

20 A. Well, we have, for example, the Digi One IA,
21 which is industrial automation-specific. It
22 has industrial protocols. I think we talked
23 through that this morning.

24 So there are specific features that
25 may be put into a Device Server which make

1 it specific to a specific market or
2 application.

3 Q. And these device servers and this
4 promotional literature, what doesn't it tell
5 me about what specific features I need to
6 have for industrial automation?

7 A. What doesn't it tell you?

8 Q. Yes.

9 A. I don't know. I think it does tell you. It
10 talks about industrial protocols, like
11 ModBus TCP, Allen-Bradley ethernet, ethernet
12 IP.

13 Certainly it's not a product manual
14 that you would get where -- that would come
15 with a product that might be, you know,
16 100 pages long, but there is always a
17 trade-off between providing -- keeping your
18 literature concise and to the point and
19 providing enough information to get a
20 customer excited about looking further into
21 the details of a product.

22 You would probably want to look at
23 the product manuals to get all the
24 nitty-gritty specifics about all the
25 different modes of operation.

1 Q. If we look at page 1, that device shown in
2 the upper left-hand corner, and we will go
3 clockwise in a circle, what device is that
4 specific for?

5 A. Are you referring to --

6 Q. On page 2.

7 A. Page 2? Okay. Page 2.

8 Q. Starting in the upper left-hand corner.

9 MR. BOYLE: This is the page that's
10 marked D Roman numeral 200764?

11 MR. ANISSIMOFF: Yes, it is.

12 BY MR. ANISSIMOFF:

13 Q. Is that specific to anything?

14 A. The TS MEI would be specific, probably, to
15 point-of-sale and medical.

16 Q. And what about it, if you can share with us
17 today, makes it specific to medical and
18 point-of-sale?

19 A. It supports specific protocols that
20 peripherals in those environments use.

21 Q. So the specificity is in the protocol?

22 A. Protocol and types of connection.

23 And then, also, in environment.

24 Q. So protocol, that's computer language; is
25 that right?

1 A. Yeah, language, yeah, protocol. How we --
2 the rules we use to communicate.

3 Q. And the next thing you mentioned in terms of
4 specificity?

5 A. Interface type, so where the ports are
6 located, whether -- how they are powered.

7 I think we talked about a version
8 of the TS, the P version of the TS MEI
9 earlier which offers power over its ports.

10 Power over its ports is specific to
11 point-of-sale devices.

12 And so this is a general product,
13 of which there are versions, like the P
14 version, which would be the power version.

15 Q. And looking at that --

16 A. So that's port connectivity, right?

17 Q. Sure. And any other specificity features?

18 A. And then the environmental characteristics
19 of it.

20 Q. Yes. You said that. Yes.

21 So looking at that PortServer TS
22 MEI, that would not be recommended, in any
23 event, for industrial, building automation,
24 security, traffic management or console
25 management?

1 A. You could use it in any of those.

2 Q. Oh, you could? That's what I thought.

3 A. But it's -- you know, we try to make
4 features specific, so it talks about a
5 specific vertical market.

6 What we do is we create a
7 generalized software load, because it's more
8 efficient to do development that way, and
9 easier on testing, where you provide a lot
10 of the features -- a lot of common features
11 and additional protocol sets, as an example,
12 in common processor platforms.

13 It makes development more
14 efficient.

15 So you might -- it just makes -- so
16 you might want to try to use it that way.
17 It doesn't mean it's optimal.

18 Q. I think we are talking about efficiency, the
19 old concept of efficiency, but as a general
20 concept, and leaving efficiency behind, if
21 you accept my terminology, you can use that
22 device that we have been referring to, the
23 PortServer TS MEI, for all of the
24 applications we have just discussed, to one
25 extent or another?

1 A. You can't use it in the industrial because
2 we don't support any industrial protocols.

3 Q. And is there a device here shown that does
4 support industrial protocols?

5 A. The Digi One IA, which is industrial
6 automation.

7 Q. So this is specific to industrial
8 automation, the second one, as we go
9 clockwise?

10 A. Yes.

11 Q. And it cannot be used in the other areas?

12 A. I mean, you could. But it would be -- it
13 wouldn't make any sense. You would pay a
14 lot more money for it.

15 I mean, it probably costs twice as
16 much as some of the other ones.

17 Q. So cost would be a --

18 A. And it has a lot more -- a lot of different
19 functions than you might need.

20 Q. So it's either pruned or beefed up to
21 whatever extent, eh, to bring it optimally
22 in line on a price point?

23 The principal of all of these
24 devices is the same, is it not, in a general
25 sense?

1 A. The principal --

2 Q. The technical principal.

3 A. That they are connecting a device.

4 Q. Yes.

5 A. So at the level that they are connecting a
6 device into a network, then they all do
7 that, yes.

8 Q. And then you identified, for example,
9 protocol, which is specific to some fields?

10 A. Uh-huh.

11 Q. Environmental aspects?

12 A. Uh-huh.

13 Q. And I forget what the third one is.

14 A. And interface aspects.

15 Q. Is that the physical connection, itself?

16 A. Physical connection and the nature of it,
17 like whether you are providing power on the
18 port or not, whether it can adapt to
19 different types of connectors.

20 Q. If we could look at Exhibit 29.

21 If we look at page 2 of that
22 document --

23 A. Yes.

24 Q. Am I to understand that, generally speaking,
25 because I don't want to pin you down, but

1 generally speaking, if I am a department
2 store chain, I would look at, seriously,
3 Hubport TM/PCI+ as my Device Server; is that
4 fair?

5 A. So -- the Hubport PCI+ is not a Device
6 Server, so, correction --

7 Q. What is it?

8 A. It's a card that provides power plus USB
9 ports.

10 So it actually is a card like --
11 remember, we discussed the multi-port serial
12 cards?

13 Q. Yes.

14 A. So it's a card, and it plugs into a computer
15 the same way the multi-port serial cards
16 plug in except it has USB Plus power ports
17 on it instead of serial ports.

18 Q. So what's the difference between a server
19 and this device?

20 A. This is a card. This is a card that plugs
21 into the side of the computer.

22 Q. And if it was in its own box, it would be a
23 server?

24 A. No. This has -- this has a PCI card
25 embedded interface.

1 The Device Server, if that's what
2 you are referring to, when you use the term
3 "server," is the whole computer system,
4 itself, self-contained, with process or
5 memory, instructions, so it can operate
6 autonomously.

7 Hubport/PCI card can't operate
8 autonomously without being plugged inside to
9 a host computer.

10 Q. And an integrator would do that?

11 A. Yes, or an OEM.

12 Q. And either the integrator or the OEM would
13 be the person who was designing the
14 point-of-sale system for the department
15 store chain?

16 A. Yeah, perhaps.

17 Q. I am not sure --

18 A. Well, the reason why I say "perhaps" is I am
19 not going to say I am an expert in how
20 point-of-sale systems in department stores
21 get designed, who does the designing, who
22 specs what, and --

23 Q. That is -- your device is adaptable enough
24 to permit integrators when they became
25 familiar with the specifications to use your

1 device as part of designing a point-of-sale
2 system for a department store?

3 A. You are speaking specifically about
4 Hubport/PCI? I just want to be clear,
5 because --

6 Q. I think I am.

7 A. Okay. So yes.

8 Q. And if I -- and to go back, the only thing
9 you would have to do with that point-of-sale
10 system designed by an OEM or an integrator
11 is you would have sold a Hubport device to
12 them?

13 A. Hubport/PCI. Plus, actually, there is a
14 Plus after it, too.

15 Q. And how am I to understand, generally, the
16 second category, point-of-sale system
17 manufacturer?

18 They manufacture -- it sounds like
19 an OEM?

20 A. Yeah, I guess so.

21 Q. And an OEM would purchase your AnywhereUSB/5
22 device?

23 A. In this specific example, yes.

24 Q. Yes. And integrate it into a point-of-sale
25 system, which that said other person

1 designs?

2 A. Yes, in this specific example, yes.

3 Q. I guess what I am saying is, you don't sell
4 point-of-sale systems?

5 A. Well, I mean, in this -- these two examples
6 that you have gone through, specifically, we
7 are not selling a point-of-sale system,
8 right.

9 Q. May I simply put it to you that as a
10 question of fairness and use of language,
11 you do not sell turnkey point-of-sale
12 systems to anyone?

13 A. Turnkey point-of-sale system? By that do
14 you mean all the aspects of a point-of-sale
15 software package, the application and all
16 that?

17 Q. Let's talk about the software package, yes.
18 Do you sell that?

19 A. So a point-of-sale software package?

20 Q. Correct. Do you sell that?

21 A. No, we do not sell them.

22 Q. Do you sell anything other than your device,
23 which we will discuss here in a moment?

24 Do you sell scanners?

25 I think we have been over it. You

1 don't sell any of those things.

2 A. Correct.

3 Q. So how can you say that you sell
4 point-of-sale systems?

5 How can you say that?

6 MR. BOYLE: I am going to object to
7 the extent it's argumentative and
8 mischaracterizes his testimony.

9 Go ahead.

10 THE WITNESS: I was trying to
11 clarify what you meant by "system."

12 So we didn't -- an example of our
13 zero-clients --

14 BY MR. ANISSIMOFF:

15 Q. I would like to talk about that for sure.

16 A. Okay. So that's a case where we are selling
17 a -- what will be equipment to drive a
18 point-of-sale station.

19 But yes, it's not the point-of-sale
20 software for checking out. That's not what
21 we do.

22 Q. Or any peripheral equipment?

23 A. And not peripheral equipment.

24 Q. Other than sensors and a camera?

25 And I think, if we can just discuss

1 that last thing you mentioned, which is the
2 zero-client?

3 A. Uh-huh.

4 Q. Can you maybe sketch out for me, or can you
5 explain this concept of zero-client, please.

6 A. Okay. The notion, if you are with client
7 machines, usually has a customized -- a
8 software application that runs on them
9 exclusively and then just dumps data back to
10 the central server. Okay?

11 The notion of zero-client is to
12 take some of that processing out of the
13 client and put it back into the server,
14 thereby reducing your overall maintenance
15 costs in your client at the point-of-sale
16 station, the checkout station.

17 Q. So what are we replacing, again?

18 A. Either the thin client or the PC that's
19 running at the point-of-sale station.

20 Q. And how are we replacing it?

21 A. With our zero-client box, which is an
22 embedded system, so it doesn't have a disk
23 drive, it doesn't have a CD, still allows
24 connection of peripherals, but acts as an
25 agent for executing -- getting its

1 instructions from the back office server so
2 that you can invest in your back office
3 servers and don't have to worry about
4 maintenance costs and maintenance issues
5 with a -- you know, maintaining a computer
6 or a thin client at your point-of-sale
7 station.

8 MR. ANISSIMOFF: To further this
9 discussion, can I ask my counsel -- friends
10 opposite to assist? Can we go to a
11 zero-client server device to look at?

12 Where is that product, is what I am
13 basically saying.

14 MS. STOLT: That was the
15 ConnectPort Display?

16 THE WITNESS: The ConnectPort
17 Display is the product.

18 MS. STOLT: That would be Exhibit
19 Number 27, page 11.

20 MR. ANISSIMOFF: Thank you.

21 BY MR. ANISSIMOFF:

22 Q. So looking at page 11 of the ConnectPort
23 Display, zero-client solution, I see the
24 device there on the schematic, and what I am
25 doing there is I am connecting a scanner, a

1 keyboard and a display to that ConnectPort
2 Display; is that right?

3 A. Yes. That's what the picture shows.

4 Q. And then I am connected via that device
5 to -- what am I connected to? I don't want
6 to misspeak.

7 Is it PC workstation Windows XP?

8 A. Yes. Where it says "green," it's labeled
9 "back office"?

10 Q. And where is the point-of-sale software
11 loaded?

12 A. It's loaded both -- running both on the
13 ConnectPort Display and in the workstation,
14 but it's dynamically loaded in the
15 ConnectPort Display.

16 So you would initially load it on
17 the workstation, PC workstation here, and
18 then as part of establishing the network
19 connectivity, may run some of its
20 instructions on the ConnectPort Display.

21 Q. And this replaces the need to have a
22 computer at that location?

23 A. Yes.

24 Q. So instead of buying what I understand to be
25 a computer, all I have to do is buy a

1 display, a keyboard, a scanner, and then I
2 buy your ConnectPort Display?

3 A. Correct.

4 These are meant to be example
5 peripherals. Obviously, you could -- it's a
6 set of devices.

7 Q. I understand.

8 And the zero-client solution could
9 be used in what fields? In the
10 point-of-sale field, as you have identified,
11 and what other fields could it be used?

12 A. We use them in hospitality today. Pretty
13 much point-of-sale and hospitality --
14 hospitality must be considered a subset of
15 point-of-sale, I guess.

16 Fast food restaurants, that's
17 point-of-sale, also, so --

18 Q. Now, looking down in the third paragraph, it
19 says "ConnectPort Display is ideal for
20 mission-critical enterprise applications.
21 The zero-client can be deployed in
22 restaurant kitchens, access control systems,
23 industrial automation, digital advertising
24 or any environment that is volatile, not
25 secure or where having an on-site PC is

1 impractical."

2 Is that correct?

3 A. That's what it says, yes.

4 Q. I asked you whether that was correct.

5 A. It can be used in any of those. We don't
6 have any customers using them today, other
7 than in point-of-sale and restaurant
8 applications.

9 Q. But again, it's a device of general
10 application, but can be used for
11 point-of-sale applications, correct?

12 A. It would have to be -- software would have
13 to be customized for specific applications,
14 but yeah.

15 Q. And you confirm that you don't make that
16 software?

17 A. We don't make PC -- we don't make
18 point-of-sale system software, but software,
19 you still have to customize, if you were
20 going to use it for an advertising
21 situation.

22 It's not geared -- the software we
23 have today is not geared towards remote
24 advertising. It could be. We would have to
25 write some additional software for it.

1 Q. I am at a disadvantage.

2 Do you write point-of-sale-specific
3 software? And if you do, what is it?

4 A. I think I answered that question awhile ago.

5 Q. The answer was no?

6 A. Correct.

7 MS. STOLT: Can I clarify?

8 MR. ANISSIMOFF: Of course you can.

9 MS. STOLT: Who would write the
10 software that's loaded on this for a
11 point-of-sale application or an advertising
12 application?

13 THE WITNESS: Well, so we write
14 some, and then other specific software might
15 be done by someone that -- another solution
16 provider. So they would integrate.

17 BY MR. ANISSIMOFF:

18 Q. So the primary software would be written by
19 someone else, and you would write software
20 to, what, accommodate that?

21 A. Yeah. I am not sure of the term "primary."
22 I think ours is pretty important.
23 "Primary," to me, implies importance.

24 So let's just say the specific
25 transaction processing logic might be

1 written by somebody else. Okay?

2 But that all of the logic to --
3 some of the logic -- I will use the word
4 "some of the logic" -- to plumb those two
5 together would be written by us.

6 Q. Again, I am beating a dead horse and being
7 unfair to you.

8 I would say that your programming,
9 your input, does not amount to a
10 point-of-sale software, as that term is
11 understood?

12 MR. BOYLE: I am going to object on
13 the grounds vague and ambiguous,
14 argumentative, mischaracterizes his
15 testimony.

16 Go ahead.

17 THE WITNESS: So I think if you are
18 going to buy a point-of-sale software system
19 for processing point-of-sale transactions,
20 the logic of that we don't do.

21 BY MR. ANISSIMOFF:

22 Q. Thank you.

23 A. I told you that.

24 Q. And I apologize if I am being obtuse.

25 I want to engage you briefly in

1 semantics, just so that I understand the
2 difference between the word "solution"
3 and "application."

4 Is there a functional difference
5 between those two words, or are your
6 products susceptible of the applications
7 that we talked about?

8 A. Yeah. I think I probably used the word -- I
9 often use the word "solution"
10 and "applications" synonymously.

11 Q. I was wondering, have you been using
12 "solution" and "applications" synonymously?

13 A. We probably have to go back to every
14 instance of "application."

15 I tend to use the word
16 "application" more to be specific to how
17 something is used.

18 And "solution" may be more
19 all-encompassing. But I can't say that I
20 haven't used them synonymously at times.

21 We would probably have to go back
22 through every instance where I have used it
23 and dissect it.

24 Q. I suppose, to further engage in the
25 semantics, I suppose a client's needs may be

1 termed a problem or a client's needs.

2 Your equipment simply responds to a
3 customer's either needs or problems in that
4 sense?

5 A. Yes, that's fair.

6 Q. With counsel's help, I just want to look at
7 the Watchport product, please, in
8 Exhibit 27. I don't know where it is.

9 MR. BOYLE: It's at the end,
10 page 55.

11 MR. ANISSIMOFF: Thank you.

12 BY MR. ANISSIMOFF:

13 Q. Looking at the schematic, and we have talked
14 about this before, so there is no need to go
15 over it, but the schematic indicates three
16 things: The first thing it indicates is a
17 Watchport/V2 USB camera, and a line is
18 shown.

19 So what is it that you manufacture?

20 A. The Watchport/V2 USB camera.

21 Q. Which, then, I guess an integrator or an OEM
22 simply incorporates into the device here
23 that is being built?

24 A. Yes.

25 Q. Is it sized in any way or is it a generic

1 size and then the plates and everything are
2 customized, or --

3 A. We have -- you can buy it with the skin or
4 without the skin. If it's with the skin,
5 then it's got a, you know, fully-finished
6 look and lenses and mounting brackets and
7 all kinds of stuff.

8 Q. And the distance sensor is also a device
9 that we discussed. And I notice that's
10 located wherever it says it's located.

11 But again, that is to sense the
12 approach of an individual?

13 A. Yes. When they are a certain distance away.
14 A motion sensor would sense the approach,
15 you know, movement.

16 The distance sensor would actually
17 tell how far someone is away.

18 Q. And the humidity and temperature sensor,
19 what is the purpose of that, as shown?

20 A. Since I am guessing you don't want the
21 obvious answer of to sense temperature and
22 humidity --

23 Q. I thought we were getting along much better
24 than that.

25 A. That's why I was trying to --

1 Q. So humidity is a problem and the sensor will
2 sense humidity, and what will happen as a
3 function of that sensing?

4 Equipment turn off, or what?

5 A. It's whatever you want it to do. I mean, I
6 don't know what this specific --

7 Q. You can deliver a humidity and temperature
8 reading?

9 A. That's correct.

10 Q. Thank you.

11 You named three companies earlier
12 who I think were your competitors; is that a
13 fair recollection?

14 A. I named three companies that were
15 competitors, yes.

16 Q. You also, in chief, suggested that our
17 client, the applicant for registration of
18 this mark, is your competitor?

19 A. Yes.

20 Q. When did you first become aware of our
21 client being a competitor?

22 A. The exact date, I can't recollect. But when
23 we introduced our zero-client ConnectPort
24 Display product.

25 And all of conventional